

IN THE MATTER OF THE
THE APPLICATION OF
TODD MORRILL
FOR SPECIAL HEARINGS AND
VARIANCE ON PROPERTY LOCATED
ON THE NORTHWEST SIDE OF W.
LIBERTY ROAD, 208' E OF C/L
HARRIS MILL (21300 W.
LIBERTY ROAD)
7TH ELECTION DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
*
* OF
* BALTIMORE COUNTY
*
* CASE NOS. 95-263-SPH
* 95-264-SPH
* 95-265-V

* * * * *

O P I N I O N

This case comes on appeal of the Deputy Zoning Commissioner's March 30, 1995 decision in which the Petitions for Special Hearing in the instant case were granted and Petition for certain Variances was Dismissed as Moot. The matter was heard de novo in a single day of testimony; the Petitioner was represented by Howard L. Alderman, Jr., Levin & Gann; People's Counsel participated in the matter and appeared as Appellant represented by Carole S. Demilio, Deputy People's Counsel. It should be noted that there were no Protestants below.

Appearing for the Petitioner was Jeffrey C. Schultz of McKee and Associates, Inc., Civil Engineer who prepared the plat to accompany the Petitions for Zoning Variance and Special Hearing, and the Petitioner, Todd L. Morrill, and Jeffrey Long, Baltimore County Office of Planning. Appearing for People's Counsel was Paul Solomon, former Chief of the Environmental Planning Section of the Baltimore County Office of Planning and Zoning. Testimony was received in a single day and memoranda received from counsel in lieu of closing argument. This case was subsequently deliberated in open hearing.

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The properties in question are the lot at 21300 W. Liberty Road ("Morrill lot") as well as Parcel A of the Gorsuch Hills subdivision located in the 3rd councilmanic district of Northeast Baltimore County. Parcel A was the subject of a prior Special Hearing, Case No. 93-289-SPH. The Morrill lot is located at the northern intersection of Harris Mill Road and W. Liberty Road, is roughly rectangular, .494 acres in area, is zoned RC-4, and is partially traversed by Harris Mill Road and W. Liberty Road. Parcel A abuts the Morrill lot at the northeast corner of the Morrill Lot, is roughly 1.47 acres in area, is split-zoned RC-2 and RC-4 and is part of the Gorsuch Hills subdivision. The Morrill lot was created as a lot of record in 1958, by the sale of the property from Albert and Elsie Sites to David and Eva Hill (Petitioner's Exhibit No. 7); in 1966, David and Eva Hill sold the Morrill lot to Hugh and Lillian Poe (Petitioner's Exhibit No. 6); in 1973, the property was conveyed to Robert Price, Sr. and Sally Price Michael; and on September 9, 1994, the property was conveyed to Mr. Todd L. Morrill, Petitioner in the instant case.

Parcel A is a parcel which was part of the Gorsuch Hills subdivision but which has no density units assigned to it for the purposes of residential development. Parcel A is also the subject of the Special Hearing Case No. 93-289-SPH before the Deputy Zoning Commissioner of Baltimore County wherein the parcel was stipulated to be transferred to the adjacent property owner for "non-density purposes". In the Petitions for Special Hearing, the Petitioner seeks approval to permit a well and septic system to be located on

the adjoining Parcel A to support the construction of a single family dwelling on the Morrill lot; further, Petitioner seeks the use of the Morrill lot for the construction of a single-family dwelling as a lot created prior to the adoption of the R.C. zones and to determine that the proposed building envelope met building setback requirements of the Baltimore County Zoning Regulations (BCZR) Section 1A03.4.B.2 or, in the alternative, if the Board determines that previously adopted setback requirements of the BCZR 1A03.B.4 (per Bill No. 98-75) are applicable, to consider Petition for Variance from the aforementioned building setbacks. The Petitioner seeks Special Hearing for the placement of well and septic on Parcel A as a result of failed percolation tests on the Morrill Lot to support a single-family dwelling. The zoning history of the Morrill Lot is somewhat difficult to ascertain. The official zoning map which was adopted by the County Council in 1971, was created using a photogrammetric map which was performed in April, 1961; that zoning map shows an "L" shaped building on the Morrill lot which was zoned B.L. along with neighboring properties about the intersection of Harris Mill Road and W. Liberty Road, with areas all around the B.L. zoned properties being zoned R.D.P. (Rural Deferred Planning). Exactly when the Morrill lot was zoned B.L. as opposed to any other residential zoning classification (R-6) is not clear, but evidence indicates that a general store was in operation on the Morrill lot dating back at least to the 1960s. BCZR Section 304, (1955) described use of undersized single family lots and the criteria to accomplish such use. At the time of the

promulgation of the BCZR (1955), the B.L. classification allowed residential uses with height and area requirements described in Section 232; Section 232.1, 2, and 3 refer one to the 1955 BCZR Section 302 and 303.1 to ascertain the area requirements. Section 302 indicates that, in the absence of a predominant surrounding residential zone, the R-6 area requirements shall govern. The instant lot was created subsequent to the promulgation of those zoning regulations and recorded in the Land Records of Baltimore County. The RC-2 and RC-4 zoning classifications were created under Bill No. 98-75 and amended by Bill Nos. 178-79, 199-90 and 113-92.

Mr. Jeffrey Schultz testified regarding the zoning and ownership history of the Morrill lot and Parcel A. He also testified concerning the proposed development, more thoroughly described on Petitioners Exhibit No. 1 that the Petitioner would provide access to an existing graveyard on Parcel A; that the Petitioner is willing to re-record the consolidation of the Morrill lot and Parcel A; that the placement of water, well and septic on Parcel A has no effect on the current and future possible uses on Parcel A as contemplated in the approval of the Gorsuch Hills subdivision; that the Morrill lot is larger than an adjoining property owner's (Anderson) lot; and that denial of Special Hearing and/or Variances would result in reduced density on the RC-4 Morrill lot presenting practical difficulty for the Petitioner. On cross-examination, Mr. Schultz indicated that he does not know if the Morrill lot, created in 1958, was approved by the Planning

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Office at that time; that Petitioner plans approximately 1,500 square feet of impervious surface; that the septic reserve area, as proposed, will abut but not traverse the forest conservation area; that at the time of creation of the lot, the lot was not undersized per the BCZR then in existence; and, that it met the area requirements of the R-6 and B.L. zoning classifications in 1958. Traversing the property described by Mr. Schultz is Harris Mill Road and W. Liberty Road with no right-of-way to describe the aforementioned roads; Mr. Schultz indicated that a right-of-way was not required because the Morrill lot is an existing lot of record. Mr. Schultz also indicated that the Morrill lot remains unaltered since its creation in 1958.

Mr. Todd Morrill provided some historical information concerning the prior use of the Morrill lot as a general store and grist mill, going on to state that the foundation of the former grist mill still exists. On cross-examination, Mr. Morrill indicated that he intends to consolidate Parcel A and the Morrill lot.

Jeffrey Long, of the Baltimore County Office of Planning, indicated that Baltimore County would not oppose a lot line adjustment so long as the adjustment would not result in additional density, going on to state that, had the Petitioner owned Parcel A and the Morrill lot before the subdivision, that the parcel could have been adjusted with the support of the Office of Planning. Mr. Long also opined that the proposed single-family dwelling and placement of well and septic on Parcel A has no negative impact on

the potential agricultural use of Parcel A. Mr. Long's testimony concluded the Petitioner's case.

For People's Counsel, Mr. Paul Solomon testified to the history of R.C., R.D.P. and subsequently, R.C. zoning classifications. Mr. Solomon opined that the use of Parcel A for well and septic is a de facto use of density and that his position would be the same if the Petitioner were to combine Parcel A and the Morrill lot. He went on the state that Parcel A could be used for agricultural purposes, and that the placement of well and septic reduces the area usable for such agricultural endeavors.

The description of Parcel A in prior Case No. 93-289-SPH was stipulated as a non-density area to exist as open-space for additional back yard of the adjoining property owners, Norman and Robyn Anderson. The Andersons never completed the purchase of Parcel A. One of the questions for this Board is whether the placement of well and septic on Parcel A to support a single-family dwelling on the Morrill lot can be accomplished in view of the prior case. The Board finds that the proposed placement of well and septic on Parcel A is within the spirit of the earlier case in providing open space as part of the Gorsuch Hills subdivision. People's Counsel argues that the placement of the well and septic constitutes a use of the parcel which carries implied density. Mr. Jeffrey Schultz points out that the denial of placement of well and septic on Parcel A results in rendering the Morrill lot as unusable, thereby reducing density in the area. The Board finds Mr. Solomon's testimony rather unconvincing as to the agricultural

use of Parcel A, and finds that the proposed well and septic may be placed on Parcel A as such placement does not interfere with the open space provided as part of the Gorsuch Hills subdivision.

The next issue for the Board to decide is whether the proposed building envelope on Petitioner's Exhibit No. 1 meets the applicable setback requirements. At issue is which set of setback requirements are applicable to this case: BCZR promulgated in 1955 which calls for setbacks in accordance with the R-6 zoning classification; the setback requirements for RC-4 zoning classifications promulgated in 1975 which would result in necessitating the requested variance in the instant case; or the current RC-4 setback requirements found in the current edition of the BCZR. The Board finds that the current height and area regulations of the BCZR for RC-4 zones apply and that per BCZR 1A03.4.B.2, the proposed building envelope is in compliance. Two points must be explored at this point. The Board, sua sponte, questions whether the northernmost corner of the proposed building envelope is in fact at least 100 ft. from the acute angle formed by the RC-2 and RC-4 zone line aforesaid to the proposed septic area; the Board shall stipulate that the proposed building envelope shall be at least 100 ft. from that zone line, and that any error in drafting shall result in reducing the proposed building envelope to meet that requirement. Second, People's Counsel argues that the front building setback on W. Liberty Road does not comply with BCZR 1A03.4.B.2.a. or b.; the Board finds that W. Liberty Road is a public road, but the facts of this case indicate that neither

Harris Mill Road nor W. Liberty Road are described in a right-of-way nor an easement to traverse the Morrill lot. Neither W. Liberty Road nor Harris Mill Road is a private road; therefore, the Board finds that the Petitioner is left with little guidance but the previous setback requirements described in 1955 BCZR for R-6 development wherein building setback is required to be an average setback from nearby properties. The Board finds, because W. Liberty Road and Harris Mill Road are not described as a County right-of-way and because they are not private roads, that the proposed setbacks meet the aforementioned setback requirements and that the proposed building envelope setback is consistent with nearby properties, and therefore the zoning regulations in effect at the time the lot was created. Therefore, the Board finds that, pursuant to proper application for a building permit and compliance with engineering requirements of septic reserve and well, the determinations sought in this Special Hearing case will be granted, thereby negating the need for consideration of the Petitions for Variance in this matter. However, the Board is compelled to address the Variance issue in this matter.

In Cromwell v. Ward, 102 Md.App. 691 (1995), Court of Special Appeals, provides guidance for the Board in consideration of variances. First to be determined is whether the property is unique; having passed the first test, the Board is to determine whether strict compliance with the zoning regulations would result in practical difficulty or unreasonable hardship for the Petitioner. This Board finds that the instant Morrill property,

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being an undersized lot for the RC-4 classification, is unique in several respects; first, the property is traversed by two public roads which are not described as a right-of-way thereby reducing the usable area to the detriment of the Petitioner; second, the Morrill lot was created in 1958 and was in compliance with then existing zoning regulations and usable for the purposes of development as a residence until the promulgation of the RC-4 zoning classification, only to be once again brought back into compliance by the revision of the RC-4 area regulations. The mere existence of this lot as an undersized lot in compliance with prior zoning regulations and subsequent revision of the regulations makes the disposition of this property unique when compared to other properties in Baltimore County. The second test being that the strict adherence of the zoning regulations would result in practical difficulty or unreasonable hardship is illustrated by the potential denial of the variance and subsequent inability of the petitioner to develop the land as proposed. The Board finds that such denial would constitute an unreasonable hardship; therefore, the Board would grant the Variance were it asked to do so.

O R D E R

IT IS THEREFORE this 20th day of May, 1996 by the County Board of Appeals of Baltimore County


ORDERED that the Petition for Special Hearing in Case No. 95-263-SPH to approve residential use of an existing lot created prior to the adoption of the R.C. zones for one single family dwelling be and is hereby GRANTED; and it is further

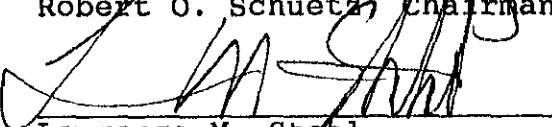
ORDERED that the building setback requirements of Section 1A03.4B.2 of the Baltimore County Zoning Regulations are applicable to the subject property; and that the Petition for Special Hearing in Case No. 95-264-SPH to permit a modification to the relief granted in prior Case No. 93-289-SPH to permit a well and septic system to be located as shown on Petitioner's Exhibit 1 be and is hereby GRANTED; and it is further

ORDERED that the Petition for Variances in Case No. 95-265-A be and is hereby DISMISSED AS MOOT.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY


Robert O. Schuetz, Chairman


Lawrence M. Stahl


Kristine K. Howanski

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County Board of Appeals of Baltimore County

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RE: Case Nos. 95-263-SPH,
95-264-SPH and 95-265-V
Todd Morrill - Petitioner

Dear Mr. Zimmerman:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules and Procedure. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

encl.

cc: Howard L. Alderman, Jr., Esquire
Mr. Todd Morrill
Mr. Geoffrey Schultz
McKee & Associates, Inc.
Pat Keller
Timothy M. Kotroco
W. Carl Richards, Jr. /PDM
Docket Clerk /PDM
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

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**IN RE: PETITIONS FOR SPECIAL HEARING
 AND VARIANCE - NW/S Liberty Rd., 340'
 North of the c/l of Harris Mill Road.
 (21300 West Liberty Road)
 7th Election District
 3rd Councilmanic District**

**Todd Morrill,
 Petitioner**

**BEFORE THE

COUNTY BOARD

OF APPEALS FOR

BALTIMORE COUNTY

Case Nos. 95-263-SPH,
 95-264-SPH and
 95-265-A**

APPELLEE/PETITIONER'S POST-HEARING MEMORANDUM

Todd Morrill, Appellee/Petitioner (referred to herein as "Morrill" or "Petitioner"), by and through his undersigned legal counsel, submits this Post-Hearing Memorandum as directed by the County Board of Appeals for Baltimore County in support of the relief requested in the above-captioned matters.

STATEMENT OF THE CASE

These Petitions for Special Hearing and Variance are before the County Board of Appeals for Baltimore County (the "Board") after having been granted in part and denied in part as moot by the Deputy Zoning Commissioner for Baltimore County. The Petitioner seeks approval of the residential use of an existing lot¹, which was created prior to the adoption of the Resource Conservation ("RC") zones in Baltimore County (the "Morrill Lot"), for the erection of a single family dwelling. In connection with the proposed construction of the one dwelling, the Petitioner

¹ Case No. 95-263-SPH. The existing lot is more particularly identified as 21300 West Liberty Road. The lot is zoned RC-4 and is approximately 0.494 acres in size.

seeks a determination, by way of Special Hearing, of the applicable setbacks² under the Baltimore County Zoning Regulations ("BCZR"), or in the alternative, a variance based on the uniqueness of the property and the effect of the BCZR thereon.³ Also by way of Special Hearing, the Petitioner seeks modification to the decision rendered in a previously approved Special Hearing filed by Richard W. Henning, *et al*, Petitioners⁴ (the "Henning Case") to permit an adjoining, residentially split-zoned parcel, created for non-density purposes ("Parcel A") to be combined with the Morrill Lot such that the septic and well for the permitted single family home could be located on the RC4 zoned portion of Parcel A.⁵

On March 30, 1995, the Deputy Zoning Commissioner for Baltimore County: i) approved the residential use of the Morrill Lot for the construction of a single-family home; ii) found that the current BCZR § 1A03.4.B.2 was applicable and that the proposed dwelling met all applicable setbacks thereunder; iii) found that the proposed use of a well and septic system for a portion of the land presently identified as Parcel A would "not interfere with the openness of Parcel 'A' which was the intention of creating a non-density parcel in prior Case No. 93-298-SPH";⁶ and iv) dismissed the Petition for Variance as moot.

² Also Case No. 95-263-SPH. One of three setback requirements appear to be applicable: i) the current BCZR requirements of Section 1A03.4.B.2; ii) the requirements of the BCZR when the lot was created; or iii) BCZR § 1A03.4.B.2 as it existed prior to the most recent modifications of the RC-4 zones pursuant to Baltimore County Council Bill No. 98, 1975.

³ The Petition for Variance is captioned as Case No. 95-265-A.

⁴ This case was decided by the Deputy Zoning Commissioner for Baltimore County on May 25, 1993 and is docketed as Case No. 93-289-SPH (introduced in these proceedings as Petitioner's Exhibit No. 8). No appeal of that case was filed to this Board.

⁵ This Petition for Special Hearing is docketed as Case No. 95-264-A.

⁶ Deputy Zoning Commissioner's decision at pages 3-4.

The Office of People's Counsel entered their appearance in the three subject cases on or about February 14, 1995. On or about April 27, 1995, the People's Counsel noted an appeal of the three subject cases to this Board. A *de novo* hearing was held by this Board on October 25, 1995, at the conclusion of which the Board requested that Counsel for the Petitioner and People's Counsel submit a Post-Hearing Memorandum to address the issues raised before this Board.

ISSUES PRESENTED

- I. IS THE USE OF AN ADJOINING, RESIDENTIALLY ZONED PARCEL, CREATED AS A "NON-DENSITY" PARCEL UNDER THE BCZR, FOR WELL AND SEPTIC VIOLATIVE OF THE PURPOSES FOR WHICH THAT PARCEL WAS CREATED?
- II. DOES THE PROPOSED DEVELOPMENT ENVELOPE ON AN EXISTING LOT OF RECORD MEET THE APPLICABLE SETBACK REQUIREMENTS OR, IN THE ALTERNATIVE, HAS PETITIONER MET HIS REQUIRED BURDEN TO JUSTIFY A VARIANCE FROM THE BCZR?

STATEMENT OF FACTS

The Morrill Lot was created in 1958 by virtue of a deed from Albert W. And Elsie S. Stites to David F. And Eva C. Hill.⁷ As testified to by Mr. Morrill, the Morrill Lot was previously used as a country store and a mill⁸. On August 15, 1966, the Morrill Lot was conveyed, by a metes and

⁷ This deed, dated December 31, 1958 is recorded among the Land Records of Baltimore County in Liber 3470, page 254 and exists in the record of the above-captioned cases as Petitioner's Exhibit No. 7.

⁸ Documentary evidence of these uses, submitted by Mr. Morrill in the form of an article copied from *The Sun Magazine*, exists as Petitioner's Exhibit No. 12 in the record of the above-captioned cases.

bounds description to Hugh L. And Lillian N. Poe.⁹ Subsequently, that same lot of ground was granted and conveyed by the Poe's and Dean William and Ellen Oleita Kenney to Robert Price and Sally Price Michael.¹⁰ Finally, on September 9, 1994, Sally Price Michael conveyed the Morrill Lot to Todd Morrill, your Petitioner.¹¹ At the time the Morrill Lot was created it was zoned R-6 under the then applicable BCZR.¹² Sometime subsequent to its creation, the Morrill Lot was zoned Business Local (BL). Mr. Geoffrey Schultz, testifying on behalf of Mr. Morrill indicated that Baltimore County records were incomplete and, therefore, the precise time that the commercial zoning classification was attached to the Morrill Lot could not be determined. Mr. Schultz noted, without contradiction or objection, that under Section 302 of the 1955 and 1958 BCZR, the Area Regulations applicable to BL zoned properties¹³ and used for residential purposes were the same

⁹ This deed of conveyance is recorded among the Land Records of Baltimore County in Liber 4658, page 243 and exists in the record of the above-captioned cases as Petitioner's Exhibit No. 6.

¹⁰ The conveyance to Robert A. Price, Sr. and Sally Price Michael is evidenced by a deed dated October 1, 1973, recorded among the Land Records of Baltimore County in Liber 5399, page 121 and exists in the record of the above-captioned cases as Petitioner's Exhibit No. 5. As noted in the "BEING" clause, the Kenney's were joined in is as co-grantors of this deed as a result of a recorded contract that the Kenny's had with the Poe's.

¹¹ The conveyance from S.P. Michael to Todd Morrill is recorded among the Land Records of Baltimore County in Liber 10801, page 223 and exists in the record of the above-captioned cases as Petitioner's Exhibit No. 4. As noted therein, the said Robert A. Price, Sr. passed away on or about September 30, 1991.

¹² Mr. Geoffery Schultz, appearing at the hearing before the Board on behalf of Mr. Morrill, was prohibited on direct examination from testifying that he had been advised verbally by officials of Baltimore County that the Morrill Lot was zoned R-6 at the time of its creation. However, on cross- and on re-direct examination, Mr. Schultz testified without contradiction or objection that the Area Regulations in Section 211 of the 1955 BCZR applicable to R-6 zoned properties were applicable to the Morrill Lot at the time of its creation in 1958.

¹³ As noted by Mr. Schultz, and as identified on the official County 200 foot zoning map adopted in 1971 (Petitioner's Exhibit No. 9), the Morrill Lot was zoned BL in 1971.

Area Regulations applicable to R-6 zoned properties.¹⁴ Moreover, Mr. Schultz and Mr. Morrill testified that there remains on the Morrill Lot one of the foundations from the previously erected structures.¹⁵

Mr. Schultz, who described his position and responsibilities with McKee & Associates, Inc., also identified, without objection, that he has appeared numerous times and has testified before the Board, the Zoning Commissioner and similar forums and that the Plat of the subject property, introduced as Petitioner's Exhibit No. 1, was accurate and was prepared under his direction and control. Mr. Schultz described the Morrill Lot as presently being zoned RC-4, irregular in shape and approximately 94 feet wide at its most narrow point and approximately 110 feet at its widest and, as shown on Petitioner's Exhibit No. 1, is partially bisected by the existing Harris Mill Road. Mr. Schultz identified 6,000 square feet as the minimum lot size necessary to create a new lot in a R-6 zone in 1958 and that the Morrill Lot was created as a 21,518 square foot lot at that time and it remains the same size today. Parcel A was described by Mr. Schultz as irregular in shape, split zoned RC-4 and RC-2, and was created as part of the Minor Subdivision of Gorsuch Hills¹⁶ and Special Hearing Case No. 93-289-SPH, the decision in which is included in the instant record as

¹⁴ The pertinent provisions for R-6 zones (Section 211), BL zones (Section 232), Height and Area Requirements for Residences in Business zones (Section 302) and Front Yard Averaging in Residence and Business zones (Section 303) exist in the record in the above-captioned cases as Petitioner's Exhibit No. 10.

¹⁵ The existence of this foundation is further supported by the official comment from Mr. Robert W. Bowling to Arnold Jablon, then Director of ZADM, dated February 11, 1995; specifically the last sentence which reads "Per Topo Sheet NE 38B, dated April 1961, there is an existing building on this lot. Please clarify." See Petitioner's Exhibit No. 11. (Emphasis added.)

¹⁶ The Gorsuch Hills Minor Subdivision Plat as approved by Baltimore County, known also 94-095-MP, was admitted into evidence as Petitioner's Exhibit No. 2 and exists as an exhibit to Petitioner's Exhibit No. 3, *infra*.

Petitioner's Exhibit No. 8. Additionally, Parcel A contains an existing graveyard, continued access to which and the dedication of a Forest Conservation Easement, of irregular shape and dimensions, to Baltimore County¹⁷ were conditions of the order creating Parcel A as a non-density parcel. Mr. Schultz further opined that, based on his familiarity of the subject property and other properties in the general area, the shape and configuration of the Morrill Lot and the fact that, as shown on Petitioner's Exhibit No. 1, it is bisected on the Harris Mill Road, makes the Morrill Lot unique as compared to other properties in the neighborhood.

As to Parcel A, Mr. Schultz testified that the proposed septic area, being comprised of approximately 4,000 - 5,000 sq. ft., has been approved in accordance with the applicable state and County requirements as administered by the County Department of Environmental Protection and Resource Management. Additionally, Mr. Schultz testified that the proposed well area identified on Parcel A, as shown more clearly on Petitioner's Exhibit No. 1, meets the state and County requirements. The proposed well and septic area are both within the RC-4 zoned portion of Parcel A. Mr. Schultz, who was familiar with the decision of the Deputy Zoning Commissioner in the Henning Case indicated that, as stated therein, Parcel A was to be transferred to Mr. and Mrs. Norman W. Anderson, Jr., for non-density purposes, to provide the Andersons with additional space to the rear of their property.¹⁸ Both Messrs. Morrill and Schultz testified that Mr. Morrill did not have any involvement in the creation of the Morrill Lot or Parcel A. Mr. Schultz indicated further

¹⁷ Mr. Morrill acquired title to Parcel A from David W. and Richard W. Henning by virtue of a deed dated December 7, 1994 and recorded among the Land Records of Baltimore County in Liber 10939, page 305 and which was admitted into evidence as Petitioner's Exhibit No. 3.

¹⁸ See the decision in the Henning Case at pages 2-3.

that he had been directed by Mr. Morrill, upon the complete approval of the relief necessary to construct a dwelling on the Morrill Lot, to delineate access in and across Parcel A in connection with the graveyard located thereon.

Both Mr. Schultz (on behalf of Mr. Morrill) and Mr. Paul Solomon¹⁹ (who was called by and compensated by the Baltimore County Office of People's Counsel) testified that no additional density would be created as a result of the proposed location of the well and septic area on Parcel A. A single-family home was acknowledged as a principal, permitted use of right on the Morrill Lot by both of these witnesses.

Mr. Jeffrey Long, a present employee of the Baltimore County Office of Planning and Zoning appeared and testified in support of the relief requested by Mr. Morrill. Mr. Long described in detail his duties and responsibilities²⁰ and his familiarity with the BCZR, the Development Regulations of Baltimore County and the Development Review Committee ("DRC") process. Being familiar with the Gorsuch Hills Minor Subdivision, Mr. Long opined that an alternative to creating Parcel A as a non-density parcel for conveyance to the Andersons, would have been to reconfigure the existing Anderson property to include the area of Parcel A by a DRC approved Lot Line Adjustment. Mr. Long also testified without contradiction that had Mr. Morrill owned the Morrill Lot at the time the Gorsuch Hills Minor Subdivision was approved, the area of Parcel A could have

¹⁹ Mr. Solomon is a retired Baltimore County employee who held positions in the Office of Planning and Zoning and the Department of Environmental Protection and Resource Management. A resident of Pennsylvania, Mr. Solomon indicated that he owns several farms and that he had also developed a portion of one of his farms into five (5) single-family residential lots.

²⁰ Mr. Long also testified that he had appeared on numerous occasions before this Board, the Zoning Commissioner and in similar forums to offer testimony and opinions on development and zoning issues.

been included with the Morrill Lot by way of DRC approved Lot Line Adjustment, without ever creating a non-density Parcel A. Finally, Mr. Long testified that he was familiar with the requested relief of Mr. Morrill and that the Office of Planning and Zoning had no objection to the requested relief and that, if granted, the requested relief would have no negative impact on agricultural operations or activities in this area of the County.

Mr. Solomon, testifying on behalf of the Office of People's Counsel, indicated that zoning lines in the RC zones generally followed the resource to be protected and not necessarily any ownership lines. In his opinion, Mr. Solomon testified that non-density parcels could not be improved with any density development nor should any uses relating to lots be located thereon. As to available uses for Parcel A, Mr. Solomon suggested that the entire area could be planted with Paulownia (*paulownia tomentosa*) trees that could be harvested in 20 to 30 years. Mr. Solomon offered extensive testimony on why commercially used properties should not be permitted to utilize adjoining RC zoned property for well or septic areas; however, on cross-examination, Mr. Solomon did acknowledge that the Morrill Lot was presently zoned RC-4, that a single-family home is permitted as of right and that no commercial uses were even being proposed. Being generally unfamiliar with the Lot Line Adjustment process, Mr. Solomon was unable to opine as to whether the acreage comprising Parcel A could have been combined with the Morrill Lot by way of DRC approved Lot Line Adjustment at the time of approval of the Gorsuch Hills Minor Subdivision.

As to the proposed improvement of a lot of record that is smaller than the minimum lot size that would be required if the lot were being created under existing RC-4 regulations, Mr. Schultz testified on re-direct and re-cross examination that in 1958, the Morrill Lot was created by a duly recorded deed, that based on available evidence the lot complied with then applicable height and

area requirements and that whether the owner owned any adjoining land was immaterial because at the time the Morrill Lot was created it exceeded the applicable 6000 square foot minimum lot size in R-6 zones.²¹ Mr. Schultz then opined, without contradiction or objection, that the Morrill Lot was a validly created lot and remains so today.

With respect to the requested variances, Mr. Schultz indicated that a “building envelope” and not a building footprint was shown on Petitioner’s Exhibit No. 1. On cross-examination, Mr. Schultz testified that the approximate size, or footprint, of the proposed home was 24 feet deep by 40 feet long. As indicated on Petitioner’s Exhibit No. 1, the building envelope as drawn meets the required setbacks under the existing RC-4 zoning requirements²². As to a potential finding by this Board that the 1955 BCZR are applicable, Mr. Schultz indicated that the front yard setback requirements were met as shown on Petitioner’s Exhibit No. 1, and that the depth of the building envelope could be modified to increase the rear yard setback for the envelope to a total of 30 feet, which setback would be even greater to the rear face of the proposed home. Therefore, Mr. Schultz opined that the Morrill Lot could be improved without a variance under the current RC-4 regulations and under the 1955 BCZR if the depth of the building envelope were reduced to a distance of 30 feet from the rear property line as previously authorized by Mr. Morrill.

Mr. Schultz testified that if the Board were to apply the RC-4 regulations as adopted by Council Bill No. 98, 1975, the Petitioner would face practical difficulty in using the Morrill Lot for a permitted purpose, absent the granting of the needed variance. Mr. Schultz testified as to the

²¹ See Section 304, Baltimore County Zoning Regulations (1955 Edition), adopted on March 30, 1955 in accordance with Title 30, Section 532(c) of the Code of Public Local Laws of Baltimore County.

²² BCZR § 1A03.4.B.2

uniqueness of the Morrill Lot as compared to other lots in the neighborhood that are zoned RC-4. The uncontradicted testimony of Mr. Schultz was that, in connection with a granting of the requested variance: i) there would be no increase in residential density beyond that which exists as a matter of record and under the BCZR; ii) the relief requested is the minimum relief necessary; iii) that the relief requested can be granted so that substantial justice can be done to both the Petitioner and other property owners in the district;²³ iv) that strict compliance with the 1975 provisions of the BCZR would prevent unreasonably the use of the Morrill Lot for a permitted purpose; and v) that the requested relief can be granted so that the spirit and intent of the BCZR will be observed and public health, safety and welfare secured.

Finally, Mr. Schultz testified that no density was being utilized for the Morrill Lot other than its present status as an existing lot of record as created in 1958. There was no testimony or other evidence that the Morrill Lot was not validly created by virtue of the 1958 deed. No subdivision is being proposed by the relief requested. On cross-examination, Mr. Schultz was asked if the existing roads were to be widened or additional right-of-way for future widening was to be dedicated. Mr. Schultz indicated that since subdivision was not an issue, no roads would be widened and no rights-of-way would have to be dedicated.

²³ There were no property owner Protestants present either at the hearing held before the Deputy Zoning Commissioner or that held before this Board.

ARGUMENT

1. **The opposition's focus on the characterization of Parcel A as a "non-density" parcel is a "non-issue" as no additional density is being created.**

The opposition has taken the position that because Parcel A was identified in the Henning Case as a "non-density" parcel, there can be no use of that Parcel in any way related to development, either existing or proposed. However, People's Counsel is without any legal support or other basis in furtherance of that position.

Paul Solomon, testifying during direct examination on behalf of People's Counsel's position, referred with authority to the *Zoning Commissioner's Policy Manual* regarding the calculation of density on land in the same ownership that is separated by different zone lines. Referring to the Zoning Commissioner's Policy ("ZC Policy") 1A00.5.a, Mr. Solomon opined that density had to be calculated and used on each separately zoned parcel. The Petitioner does not quarrel with that policy in the above-captioned cases; it simply is not relevant. In this case, the Petitioner seeks to reconstruct improvements (a new dwelling) on a lot of record zoned RC-4 and to locate the well and septic systems on that portion of Parcel A that is zoned RC-4.²⁴ If the Morrill Lot were split zoned, the well and septic system would have to be located in the same zone as the house.²⁵ The RC-2 zoned portion of Parcel A is to remain as shown on Petitioner's Exhibit No. 1, burdened only by the existing graveyard.

On cross-examination, Mr. Solomon attempted to discount the legal effect of the *Zoning*

²⁴ Parcel A is split-zoned RC-4 and RC-2. As shown on Petitioner's Exhibit No. 1 the well area and septic reserve area are located completely within that portion of Parcel A which is zoned RC-4.

²⁵ See ZC Policy 1A00.5.b(1)(c) at page 1A-3.1.

Commissioner's Policy Manual despite his reliance on it during direct examination with respect to a non-analogous situation. Mr. Solomon opined that the use of a "non-density" parcel for well, septic area or roadway access in connection with uses permitted on lots containing density was contrary to the reason that "non-density" parcels were created. Mr. Solomon's view of "non-density" parcels is clearly inapposite to the applicable regulations adopted by Baltimore County. In ZC Policy 1A00.4.b(1), the use of non-density parcels for access is clearly one of the purposes for which non-density parcels may be utilized. Mr. Solomon's position, when questioned on cross-examination about the uses of non-density parcels expressly permitted by County regulation, changed to an attack on the regulations themselves. However, Mr. Solomon was unable to refute the effect of County Council Bill No. 88, 1990²⁶ which created the scheme by which the *Zoning Commissioners Policy Manual* was adopted as part of the Code of County Regulations ("CCR").²⁷

The term "regulation" as used in the CCR includes statements that have general and future effect, are adopted to carry out a law administered by the agency adopting them and can be in any form including a "statement of policy" or a "statement of interpretation". County Code § 2-417(a)(1). Moreover, the Director of Zoning Administration and Development Management ("ZADM")²⁸ has full power and authority to make, promulgate, adopt and amend policies, rules or regulations in connection with the BCZR. County Code § 26-135(a). The adopted policies

²⁶ County Council Bill No. 88, 1990 codified, in § 2-416 *et seq.* of the County Code of Baltimore County, the statutes governing the creation and adoption of the Code of County Regulations.

²⁷ The *Baltimore County Zoning Commissioner's Policy Manual* was adopted on May 21, 1991 and was amended on May 13, 1992.

²⁸ The Board is advised that, as a result of a recent action by the County Council, the Director of ZADM is now identified as the Director of the Department of Permits and Development Management.

regarding the use of parcels created as "non-density" are fully effective and in no manner contravene the intent of the Resource Conservation zones as enacted by the County Council. Moreover, the rules and regulations of an agency which are promulgated properly can not be disregarded, suspended or waived as long as the rules remain effective. *Hopkins v. Maryland Inmate Grievance Commission*, 40 Md. App. 329,335 (1978).

Mr. Solomon acknowledged that if the requested relief is granted by this Board, there are two areas of Parcel A that would be potentially unavailable for other uses such as the planting of paulownia trees. Upon further examination, however, Mr. Solomon conceded that the unavailable area created on Parcel A by the water well was approximately 1 square foot (based on a 6 inch diameter well casing) and that the septic reserve area would, as described by Mr. Schultz, utilize approximately 4,000 square feet. Therefore, of the $1.47 \pm$ acres ($64,000 \pm$ square feet) of Parcel A, Mr. Solomon acknowledged that if the requested relief is granted, approximately 4,001 square feet may be unavailable for the planting of paulownia trees.

Mr. Solomon was without any basis, other than his "feelings" and "understandings" to support his stated positions regarding the requested relief. Mr. Solomon's "belief" that the requested relief would, somehow, have a direct impact on the resources of the County is not shared by the County's agricultural specialist. By Inter-Office Correspondence to the Zoning Commissioner, dated February 28, 1995, Wally Lippincott, Jr. takes the extraordinary step of correcting previous written comments in this matter to clarify that the proposed relief has "no direct negative impact" on agricultural resources in this case, however, as the existing lot and the proposed additional ground

[Parcel A] is (*sic*) too small to support agricultural activities."²⁹ (Emphasis in original.)

The definitions of "Gross Density", "Gross Residential Density" and "Net Density" were deleted from the BCZR by Council Bill Nos. 106, 1963 and 100, 1970. The terms "density" and "non-density" are not defined in the BCZR. However, BCZR § 101 provides that "any word or term not identified in this section shall have the ordinarily accepted definition as set forth in the most recent edition of *Webster's Third New International Dictionary of the English Language, Unabridged*". That dictionary defines "density" as, *inter alia*, "the average number of individuals or units per space unit." Likewise, the prefix "non" is defined as the "absence of" something. Applying the ordinary meaning of these words as combined means the "absence of a number of individuals or units per space unit". Thus, Parcel A was created without any number of units per acre, i.e. there is no density associated with it. Mr. Morrill is not attempting to create or use any density which does not already exist on the Morrill Lot. He has available sufficient density to construct one single-family dwelling as of right in the RC-4 zone³⁰ and no more. The requested relief, as testified to by Mr. Schultz will not modify or increase that density.

Mr. Long, an official of the Baltimore County Office of Planning and Zoning, testified without contradiction that the use of Parcel A in conjunction with the Morrill Lot could have been

²⁹ The purported "concern" expressed by Mr. Lippincott, in his February 28, 1995 correspondence, relates to the use of "nondensity parcels zoned RC2 to be used for providing septic and well (*sic*) in order to support additional development in a RC2 or RC4 zone." (Emphasis added.) In this case the septic and well are located within the RC4 zone, the same zone as the Morrill Lot. Moreover, there is no "additional development" proposed; Mr. Morrill intends to build on the Morrill Lot one single-family dwelling. As testified to and acknowledged by Messrs. Schultz, Solomon and Long, there exists presently sufficient density for one dwelling.

³⁰ One-family detached dwellings are permitted as of right pursuant to BCZR § 1A03.3.A.1.

accomplished by a Lot Line Adjustment at the time of approval of the Gorsuch Hills Minor Subdivision, without the necessity of a zoning hearing subject to appeal by the Office of People's Counsel. Unfortunately (for Mr. Morrill), at the time of the Gorsuch Hills Minor Subdivision, Mr. Morrill did not own the Morrill Lot. No increase in density would have resulted in such a Lot Line Adjustment; all available density on the Henning property was used during the Minor Subdivision process. The legal effect is identical; the 1.47 ± acres, presently identified as Parcel A, would be occupied by the existing graveyard, a well and a septic reserve area. The Morrill Lot would still have been improved only with a total of one dwelling unit.

Thus, your Petitioner submits that the unwarranted focus of the Office of People's Counsel on the use of the term "non-density" to characterize Parcel A is without import to the relief requested. Were Mr. Morrill attempting to construct homes at a density greater than that which is presently permitted as of right on the Morrill Lot, there would at least be a viable issue for discussion. However, Parcel A will continue to serve the open space purpose for which it was created and can even be planted, as suggested by Mr. Solomon, with paulownia trees, saving and excepting the minimal areas to be occupied by a well casing and a completely underground septic drain field. There was absolutely no credible evidence to even suggest that the granting of the Special Hearing relief necessary for the use of Parcel A as proposed would in any way interfere with the openness of Parcel A or otherwise be detrimental to the public health, safety and/or general welfare. In fact, it is arguable that the use of Parcel A as proposed by Mr. Morrill is far better from both an environmental and public health standpoint than attempting to locate these facilities on an adjoining, already improved lot or developing a shared septic system and water well as suggested by Mr. Solomon.

For all of the foregoing reasons, the decision of the Deputy Zoning Commissioner granting the amendment to the Henning Case and the use of Parcel A as proposed by Mr. Morrill should be affirmed and/or re-granted by this Board in the first instance.

2. The location of the proposed dwelling meets the applicable requirements of the BCZR as to front, side and rear yard setbacks, or in the alternative Petitioner has met his burden for the granting of any necessary variance.

The proposed building envelope as shown on Petitioner's Exhibit No. 1 meets the current setback requirements of BCZR § 1A03.4.B.2. That is, the building envelope as drawn provides that the faces of the proposed dwelling will be not less than 25 feet from all rights-of-way³¹ and all property lines. *See* BCZR § 1A03.4.B.2.a. As a private road is not applicable, neither West Liberty or Harris Mill Roads are classified as arterial roadways and there are no adjacent RC2 zone lines, reservoir properties or conservancy areas being used for agricultural purposes, BCZR §§ 1A03.4.B.2.b through .f are not applicable. Thus, the Deputy Zoning Commissioner for Baltimore County determined correctly that no variance for the proposed dwelling was necessary and dismissed Petitioner's variance request as moot.

On *de novo* appeal, should this Board find that the proposed building envelope and dwelling to be erected therein are governed by the setback requirements of the BCZR area regulations in effect at the time the Morrill Lot was created, a minor modification to the building envelope as shown of Petitioner's Exhibit No. 1 will eliminate the necessity of a variance. As testified to by Mr. Schultz, the proposed building envelope is not the footprint of the proposed dwelling. In fact, Mr.

³¹ As noted on Petitioner's Exhibit No. 1, there are is no presently applicable right-of-way for West Liberty Road.

Schultz indicated that the proposed dwelling would be approximately 24 feet deep and 40 feet wide. Therefore, Mr. Schultz testified that the rear line of the building envelope as shown on Petitioner's Exhibit No. 1 could be moved an additional five (5) feet east of the rear property line, thereby increasing the minimum rear yard setback to the 30 feet required by 1955 BCZR § 211.4³². As to the front yard setback, the building envelope as shown is already 25 feet from the front lot line as required by BCZR § 211.2. Mr. Schultz indicated further that by the express incorporation of the front yard averaging provisions of 1955 BCZR § 303.1 into Section 211.2 thereof and based on the location of the existing structure on the immediately adjoining lot, the applicable setback for front building line to center line of street is met as shown on Petitioner's Exhibit No. 1. Thus, with the slight modification of the rear line of the building envelope as testified to by Mr. Schultz, the dwelling proposed by Mr. Morrill can be erected without the necessity of a variance to the 1955 BCZR.

Certain County officials consulted by the Petitioner have suggested that the RC-4 setback requirements established by County Council Bill No. 98, 1975 are applicable. Although Petitioner disagrees with this "minority" suggestion, he filed a Petition for Special Hearing to resolve the issue. If this Board were to rule that neither the current setback requirements of the BCZR nor the 1955 BCZR requirements were applicable, then a variance from BCZR § 1A03.4.B as adopted in 1975 is necessary and justified to prevent Mr. Morrill from suffering the practical, undue and unreasonable hardship that would result from his being denied the use of his property for a permitted use.

³² The applicable provisions of the 1955 Baltimore County Zoning Regulations exist in the Record as Petitioner's Exhibit No. 10.

The variances that are necessary from the 1975 RC4 zoning regulations, if the same are found to be applicable, are as follows:

1. Front Yard: 30 feet in lieu of the 100 feet required from the centerline of a street;
2. Side Yard: a left side yard setback of 50 feet in lieu of the 100 feet required from the centerline of the street (Harris Mill Road) and a right side yard setback of 25 feet in lieu of the 50 feet required from a lot line; and
3. Rear Yard: 25 feet in lieu of the 50 feet required from a lot line other than a street line.

As noted above, Mr. Schultz testified extensively, without objection or contradiction, that based on the shape and topography of the Morrill Lot and the fact that it is burdened by the existing alignment of Harris Mill Road, a variance is justified. Mr. Schultz noted carefully that the conditions described as justification for the variance, if necessary, are unique to the Morrill Lot. It is clear from the testimony of Messrs. Morrill and Schultz that Mr. Morrill did not create the Morrill Lot and had no part in establishing the lot lines in 1958.

The intermediate appellate court in this State has made it clear that:

the initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and uniqueness of that piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist.

Cromwell v. Ward, 102 Md. App. 691, 698-699 (1995).

Mr. Schultz opined that there were no other properties in the neighborhood that had the dimensions, site constraints and road encumbrance even similar to the Morrill Lot. Therefore, it is beyond question that the 1975 RC4 setback regulations impact the Morrill Lot more severely because of these unique characteristics. Other properties in the neighborhood are not of the irregular shape and narrowness of the Morrill Lot, are not burdened by being partially bisected by a public

roadway and, therefore, would not suffer a similar hardship or difficulty. Absent such uniqueness of the Morrill Lot, the analysis by this Board would be stopped and the variance denied. *Chester Haven Beach Partnership v. Board of Appeals for Queen Anne's County*, 103 Md. App. 324, 338 (1995) It is abundantly clear that the hardship to be faced by Mr. Morrill absent the granting of any necessary variance is not self-inflicted, i.e. not the result of any action or inaction by Mr. Morrill.

Finally, Mr. Schultz testified that the factors specified in BCZR §307.1 were met by the facts and circumstances in the instant case. Moreover, Mr. Schultz testified affirmatively that the requirements of *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28 (1974) and *McLean v. Soley*, 270 Md. 208 (1973) were met by the unique circumstances applicable to the Morrill Lot and by the practical difficulty and undue hardship to be faced by Mr. Morrill absent the granting of any necessary variance.

For the foregoing reasons this Board should find that the building envelope for the Morrill Lot as proposed on Petitioner's Exhibit No. 1 meets the current setback requirements of the BCZR or that the modified building envelope as testified to by Mr. Schultz meets the setback requirements of the 1955 BCZR and dismiss the Petitioner's Petition for Variance as moot; or, in the alternative, accept the uncontradicted testimony of Mr. Schultz and the supportive comments from the Office of Planning and Zoning and grant the necessary variance to the RC4 setback requirements as established by County Council Bill No. 98, 1975.

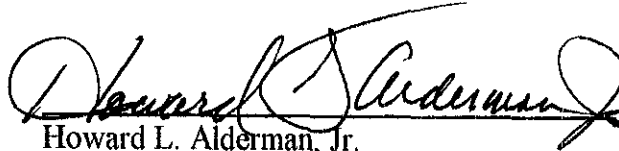
CONCLUSION

Mr. Morrill is not seeking to create density where it does not already exist as a matter of law. Undue concentration on the term "non-density" to describe Parcel A creates a distinction without a meaningful or legal difference in the improvement of the Morrill Lot. Parcel A is not being used for "density" purposes, i.e., its use does not create additional dwelling "units" and, as noted by Mr. Lippincott, it is too small for agricultural purposes. Had the land comprising Parcel A been combined with the Morrill Lot by way of lot line adjustment at the time of the Gorsuch Hills Minor Subdivision, the proposed dwelling would still be located on the Morrill Lot and the proposed well and septic would be located in the RC4 zoned portion of the land presently identified as Parcel A. Moreover, "non-density" parcels, once created can be utilized to support other uses. A means of access to an adjoining use is one of the uses expressly permitted by the current, applicable Code of County Regulations.

The Morrill Lot is unique as compared to other properties in the neighborhood. The proposed dwelling can be erected so as to meet the current setback requirements of the BCZR or the setback requirements that were applicable at the time the lot was created in 1958. If, by some theory, this Board finds the setback regulations for RC4 zones as created by County Council Bill 98, 1975 are applicable, there is uncontradicted, ample evidence of the uniqueness of the Morrill Lot and the practical difficulty and undue hardship that would be suffered by the Petitioner absent the granting of a variance in that situation.

Therefore, the Petitioner respectfully requests that this Board pass an Order granting the

relief necessary for the erection of a single family home on the Morrill Lot with the associated water well and septic reserve area to be located within the RC4 zoned portion of Parcel A.

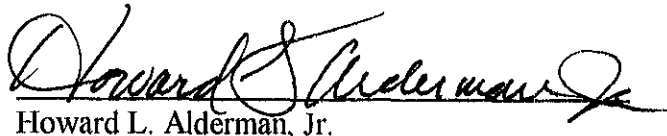


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of November, 1995, a copy of the foregoing Appellee/Petitioner's Post-Hearing Memorandum was mailed, postage prepaid, First Class United States Mail to: Peter Max Zimmerman, People's Counsel and Carole S. Demilio, Deputy People's Counsel for Baltimore County (collectively 1 copy) at: Office of People's Counsel, Room 47 Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204.



Howard L. Alderman, Jr.

RECORDED

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: R. Schuetz
L. Stahl
K. Howanski

DATE: November 16, 1995

FROM: Kathi

SUBJECT: Todd Morrill /Cases No. 95-263-SPH; No. 95-264-SPH; and
95-265-A.

The above-referenced case was heard by the Board on October 25, 1995, with memorandums due from counsel on November 15, 1995.

Enclosed for your review are the following documents:

1. Memorandum of People's Counsel for Baltimore County, filed November 14, 1995.
2. Appellee/Petitioner's Post-Hearing Memorandum filed by Howard L. Alderman, Jr., Esquire, on November 15, 1995.

Also enclosed is a copy of the notice of the public deliberation scheduled for Wednesday, December 13, 1995 at 9:00 a.m.

Should you have any questions regarding the above, please call me.

kathi

Attachments

MICROFILMED

IN THE MATTER OF
TODD MORRILL
21300 WEST LIBERTY ROAD
Case Nos. 95-263-SPH
95-264-SPH, 95-265-A

BEFORE THE
BALTIMORE COUNTY
BOARD OF APPEALS

MEMORANDUM OF PEOPLE'S COUNSEL

Peter Max Zimmerman, People's Counsel for Baltimore County, and Carole S. Demilio, Deputy People's Counsel, submit this Memorandum, as per request, in lieu of closing argument.

STATEMENT OF FACTS

The Petitioner, Todd Morrill is a real estate developer and broker in Baltimore County. In September, 1994 he purchased a .494 acre parcel zoned RC 4 (Rural Conservation - Watershed Protection). The Petitioner intends to sell the parcel as a residential home site. The parcel was carved out of a larger tract and created by deed dated December 31, 1958. The site had been used as a general store and mill although that use has been abandoned for some time. The site is unimproved, and is known as 21300 West Liberty Road.

It is situated at the corner of Harris Mill Road and West Liberty Road (northeast of Harris Mill and northwest of West Liberty). Little Deer Creek is a significant stream that runs very near, if not through the site, winding into Harford County. There was testimony that Little Deer Creek empties into the Loch Raven Reservoir.

Subsequent to the purchase of the site, Petitioner, through his engineer, requested permission from Zoning Administration and

Development Management (ZADM) to use a separate off-site parcel for a well and septic system. ZADM replied that the request could not be granted by their office, and noted that this proposed use for the off-site parcel was contrary to the use permitted when the parcel was created in 1993.

In 1993, a 10.78 acre lot was proposed for subdivision by David Henning, the developer/owner (hereinafter referred to as "Henning"), (Case No.93-289-SPH). The lot was split zoned, 5.73 acres zoned RC 2 (Rural Conservation - Agriculture) and 5.05 acres zoned RC 4. The RC 2 portion of the lot contained a dwelling. The lot was farmed. The .494 acre RC 4 parcel in the instant case is a separate lot from the 10.78 acre tract and was never a part of the 1993 subdivision.

The developer in 1993 proposed to create three building lots and a non-density parcel from the 10.78 acre tract as follows:

- (1) Lot 1 with 2.98 acres and the existing house.
- (2) Lot 2 with 2.67 acres, split-zoned 1.88 acres of RC 2 for a future dwelling, and .79 acres of RC 4 designated as non-density.
- (3) Lot 3 with 3.55 acres, split zoned 3.24 acres of RC 4 for a future dwelling, and .31 acres of RC 2 designated as non-density.
- (4) Parcel A with 1.47 acres split zoned .44 acres of RC 2 and 1.03 acres of RC 4. The entire Parcel A was designated as non-density.

The 10.78 acre tract has a maximum density of 3 units (2 for

the RC 2 portion containing between 2 and 100 acres, (BCZR 1A013B) and 1 for the RC 4 portion of less than 6 acres (BCZR1A03.4B). All the permitted density was utilized in the 1993 subdivision approved by the Deputy Zoning Commissioner on May 25, 1993. (See attached Opinion and Order, marked as People's Counsel Exhibit 1).

The Opinion noted the use of the non-density Parcel A as follows:

"Finally, proposed Parcel A, which contains approximately 1.03 acres zoned RC 4 and .44 acres zoned RC 2, shall be transferred to the Andersons for non-density purposes. As previously stated, the Andersons are desirous of acquiring Parcel A to provide additional land to the rear of their property. There shall be no further subdivision of this lot and the Petitioners shall record a new deed for Parcel A in the Land Records of Baltimore County which references this case and the terms and conditions set forth herein."

In December, 1994, Morrill purchased Lots 2 & 3, and Parcel A from Henning. (Henning never went through with the sale of Parcel A to the adjoining property owner, Anderson, as set forth in the Opinion above. Also, Henning's son purchased Lot 1 and the existing dwelling and resides therein).

Morrill filed three zoning Petitions in January, 1995. He requested:

(1) Special Hearing relief to locate a well and septic on Parcel A to support development of the .494 acre parcel. (Case 95-264SPH);

(2) Special Hearing relief to construct a residential dwelling on the .494 acre parcel, as a "lot" existing prior to the creation of the RC zones in Baltimore County, and approval to apply BCZR 1A03.4.B.2 to building setbacks on the site, (Case 95-263-SPH);

(3) Variance relief from setback requirements of BCZR Section 1A03.4.B.4) if the special hearing relief in (2) above is not granted (Case No.95-265-A).

The Deputy Zoning Commissioner granted the Petitions for Special Hearing and dismissed as moot the Variance Petition.

A timely appeal was filed by the Office of People's Counsel.

A de novo hearing was held before the Baltimore County Board of Appeals on October 25, 1995. The Petitioner testified and also presented as witnesses the engineer, Geoffrey C. Schultz, and Jeff Long from the Baltimore County Office of Planning and Zoning. People's Counsel presented Paul Solomon, former head of the environmental planning section of the Office of Planning and Zoning, and former director of the agricultural preservation program of the Department of Environmental Protection and Resource Management for Baltimore County (DEPRM).

Memoranda were requested in lieu of closing arguments.

CAN A WELL AND SEPTIC SYSTEM BE LOCATED ON A DESIGNATED NONDENSITY PARCEL?

The facts and zoning history of the non-density Parcel A are important to the decision in the instant case. The issues in this

case reach further back and beyond the issues framed by Morrill in his three Petitions heard by the Deputy Zoning Commissioner in March, 1995. It is necessary to look at the subdivision approved in 1993 and the creation of the nondensity parcel in that process.

The 1.47 acre nondensity parcel was created when the purchaser of a single 10.7 acre split-zoned lot attempted to subdivide into residential lots. A request to subdivide split-zoned sites will trigger the application of BCZR 1A00.5, which states as follows:

"1A00.5-Application to tract divided by zone boundary. [Bill No. 98-75]

Whenever a single tract is divided by a zone boundary so that portions of such a tract lie within R.C. zones of different classifications, the total number of dwellings or density units permitted shall apply to each tract individually and for the purpose of these regulations shall be considered as separate parcels. [Bill No. 98. 1975]

This section was enacted in the same legislative Bill No. 98 which created the RC zones in Baltimore County as we know them today. Its purpose is two-fold: the calculation and the application of density to a single rural tract divided by a zone boundary.

The permitted density is calculated as though the property contained within each zoning boundary is a separate lot. In the 1993 subdivision, the zoning line essentially divides the site in half, running from the northwest to the southeast. (See

Petitioner's Exhibit 2).

A simple application of the density permitted under BCZR and Section A100.5 for the RC 2 portion (5.73 acres) would net two density units, that is, two lots of at least one acre each. A dwelling existed on on the RC 2 in 1993, thus one density unit remained.

A simple application of the density permitted under BCZR 1A03.4.B and section A100.5 for the RC 4 portion (5.05 acres) would net one density unit. Thus the developer in 1993 would have a total of three density units on the site, one of which was used by the existing dwelling. The developer sought and received approval for the maximum density on the site. The calculation of density in 1993 appears to comply with the law.

Section A100.5 also requires that the application of the density complies with the calculation. In other words, the dwellings must be located on the portion of the site from which the density originated. In the 1993 subdivision, the two lots or dwellings permitted on the RC 2 must be located exclusively on the RC 2, and the single density unit for the RC 4 must be located exclusively on the RC 4. This second location requirement of Section 1A00.5 is clear from the use of the phrase "the total number of dwellings or density units permitted shall apply to each tract individually . . . " (Emphasis added). The Zoning Manual is consistent in this regard and states, " If RC zoned land under the same ownership is separated by a different RC zone, then the density should be calculated and utilized by each zone parcel."

(Emphasis added). Compliance with BCZR A100.5 is necessary to assure that a transfer of density does not occur on split-zoned sites. Otherwise a greater density may occur on a portion of the site than would be permitted if the portion existed as a single parcel.

In the case at hand, the 1993 subdivision creating three lots and one parcel did not apply the density to the respective zoned portions of the site. The existing dwelling on Lot 1 lies totally within the RC 2 and appears to comply. The second density unit permitted in the RC 2 should be contained in a lot which is zoned entirely RC 2. It is not, and the new Lot 2 is split-zoned. The third remaining density unit originates from the RC 4 portion and should be contained in a lot which is zoned entirely RC 4. It is not and the new Lot 3 is split-zoned.

The regulation of density in the zoning process has been endorsed by the Maryland Court of Appeals. In Malmar Associates v. Board of County Com'rs., 260 Md. 292, 272 A2d 6, 15 (1971), the Court stated: "It is well established that zoning to regulate density is a proper exercise of the police power . . . The public health, safety and welfare and density control are reasonably related; but, of course, the means used to control density must themselves be reasonable." (citations omitted).

In 1987, the Court of Appeals upheld a Montgomery County "Agricultural Preservation Plan" whose purpose "was to preserve open space and agricultural land in the upper part of the County by restricting development of the land." West Mont. Ass'n v. MNCP &

P. Com'n, 309 Md. 183, 187. The Court affirmed the significance of density regulation set forth in Malmar, supra, as a fundamental zoning principle, "At the outset, we state a basic proposition that is not contested by any of the parties - that the regulation of the density and distribution of population is a part of the zoning power and ordinarily is to be exercised by the District Council" [of Montgomery County], Id. at 194. The Court of Appeals in West Mont. Ass'n. also quoted a zoning treatise, which states, "Intensity of use is said to be a proper element of zoning. Furthermore, it has been authoritatively stated that intensity of land use is a well recognized and valid city concern which relates to both health and safety factors and to proper zoning practice." Id. (Footnotes omitted).

The 1993 subdivision appears contrary to the intent of BCZR 1A00.5, an important density regulation. But in an attempt to make the 1993 subdivision acceptable in the zoning process, the developer Henning created one separate nondensity parcel, Parcel A, and distinct nondensity portions of Lots 2 & 3. The Deputy Zoning Commissioner placed strict restrictions on the nondensity portions of the subdivision. For instance, the nondensity portion of Lot 2 "will have no improvements placed thereon and shall be used for agriculture only." The 1.47 acre Parcel A was restricted as heretofore quoted on page 3 of this Memorandum. These restrictions assured, in any event, that the maximum net density of 3 units would not be exceeded, despite the problematic crossing of zoning boundaries. Under these restricted circumstances, the case did not

warrant an appeal at that time.

Clearly, the nondensity designations of Lots 2 & 3, and the creation of Parcel A as nondensity were integral parts of the 1993 subdivision. The subdivision could not exist without them. An abuse or misuse of Parcel A or portions of Lots 2 & 3 with illegal uses would disturb the integrity of the subdivision and further distort the application of BCZR 1A00.5. Moreover, to allow the use of Parcel A for an accessory use, or as an extension of density, is subversive not only of BCZR 1A00.5 but also of the absolute density limits of BCZR 1A01.3.B, thus in effect allowing 4 density units on the "Henning" subdivision instead of 3. This effect compounds the noncompliance problems with the 1993 subdivision.

The concept of maintaining the integrity of a subdivision was set forth in Marathon Bldrs., Inc. v. Montgomery County Olan. Bd. 246 Md. 187, 227 A2d 755 (1967). In that case, the property owner sought to develop an undivided tract of 9.895 acres for apartment units under the permitted zoning. The buildings were constructed on 6.133 acres of the tract. During the application process to develop the site, the property was rezoned to a lower density multifamily residential zone. The property owner was grandfathered and proceeded with the planned construction. He conveyed the completed buildings to various third parties and after twelve years held title to only the undeveloped portion consisting of 3.762 acres. The owner sold this acreage to the appellant who planned to develop the site. The Planning Board denied the application. The appellant alleged irreparable harm if development were prohibited.

The Circuit Court affirmed the Planning Board's denial and stated: "It is clear that the original owners utilized the 3.762 acres to meet the density requirements under the zoning ordinance for the apartments units which were developed. . . . The Court has found no Maryland authorities, nor has plaintiff cited in its brief, that would afford the plaintiff relief upon the facts which reflect that he has, unfortunately, purchased a \$15,000 "pig in a poke" - 3.72 acres of land upon which he has and is paying a skyrocketing property tax rate and which he cannot develop unless, I think, he is given legislative relief." Id. 757. The Court of Appeals affirmed the Circuit Court. The Appellate Court noted: "The question before this Court was whether the lower court was correct in sustaining the Planning Board's finding that the appellant's land had been previously used by its owners to satisfy the density requirements of the R-30 classification . . . on the ground that the Planning Board's action was neither arbitrary, capricious nor contrary to law. . . This Court is of the opinion that the holding of the chancellor was correct." Id. . Moreover, the Court refuted the appellant's contention that it is an "innocent purchaser" and that "it should not be responsible for the exhaustion of the area consumed by the density requirements attendant to the development and construction performed on the tract by its predecessor in title." Id. The Court stated that to exclude the 3 acre tract from its integration and use in the prior development is a "complete circumvention of the zoning laws." Id. at 759.

The significance of upholding the spirit and intent of the RC

zones is evident in a Baltimore County zoning case, The Matter Of Steven H. Gudeman, Case No. 88-490-SPH. The Board was unwilling to increase density for a lot divided by a road. The Petitioner's argument that the road in effect created two lots and that density should be calculated separately for each portion was soundly rejected by the Board. The intent of the RC legislation could not be subordinated to the convenience and expediency of the property owner regardless of physical constraints.

In a more recent Board of Appeals decision pending before the Circuit Court, the Board rejected a commercial property owner's attempt to locate his septic system on a off-site residential lot. In the Matter of Long Green and Orville Jones, Case No.95/341/94-CV10257. In the appeal, the preliminary decisions from the Circuit Court affirm this position. (See also In The Matter Of Harford Joint Venture, Case No. R-94-142, where the property requested reclassification of the RC 5 portion of his split zoned property to construct a septic reserve area to support the commercial use on the BR portion of the lot, since use of the RC 5 to support development on the BR was not permitted).

The use of residentially zoned property to support commercial development is not permitted under the zoning regulations unless authorized by statute. BCZR Section 409.8.B permits parking for a commercial use in a residential zone. The implication is that no other use is permitted unless stated in the Regulations.

The decisions in these cases are consistent with People's Counsel's position in the instant case. As hereinafter explained,

the term "development" would include support systems, such as well, septic, and parking. Development of a commercial lot cannot extend into a residential zone unless authorized by the zoning regulations. Similarly, development of a residential lot cannot extend into a nondensity parcel.

There is no clear definition of "nondensity" found by this Office. The Baltimore County Zoning Regulations do not define nondensity. Webster's dictionary defines "density" as "The number of inhabitants per unit geographic region." "Gross Residential Density" is defined in Anderson's American Law of Zoning, 3rd, as "The number of dwelling units in relation to an area of land actually in use or proposed to be used for residential purposes, excluding public rights-of-way whether exterior or interior, but including interior parking areas and access lanes, sidewalks, parks, playgrounds, common open spaces, etc." (emphasis added). This definition includes adjunct parts to the actual dwelling structure. That is, a dwelling unit includes more than the house itself. Conversely, a nondensity parcel must not contain such adjunct parts.

In addition, a septic system and well would be an "accessory structure" or an "accessory use" as defined in BCZR Section 101, and Section 400. As such, they are a part of development and density. Such accessory uses are not permitted on a designated "nondensity" parcel.

In a relatively recent Board of Appeals decision, In The Matter Of Dennis G. McGee, Case No. 94-42-SPH, density was at

issue. A property owner created and transferred by deed certain parcels from her 14 acre tract prior to the enactment of the RC zones. One such .7 acre RC 2 parcel was transferred to BGE to construct a utility tower. The Petitioner in the case alleged one density unit was attributable to the .7 acre parcel, which he intended to merge with his adjacent site (which admittedly had no density) to construct a home. The Board ruled that no density existed on the .7 acre parcel. Following passage of the RC 2 legislation which established a 1 acre minimum, the Board ruled the .7 acre parcel was no longer a "lot" and therefore, had no density.

The testimony and documents introduced in the People's Counsel's case support these interpretation of the applicable laws and regulations.

The issues and position of this Office were eloquently presented and explained at the hearing by Mr. Paul Solomon. His instrumental role in developing the RC zones in Baltimore County underscores his expert opinion that the proposed development contravenes the clear intent and spirit of the RC legislation. The intent of the RC 2 and RC 4 legislation is to protect agriculture and the watersheds respectively. Only restrained development is permitted; to authorize development on an RC 4/ RC 2 site also designated as nondensity is a serious deviation from the purpose of these zones. (See attached exerpts from the applicable Regulations).

Mr. Solomon stated affirmatively that BCZR 1A00.5 applied to the 1993 subdivision. He explained that "nondensity" equates to

"no development." Mr Solomon opined that the use of the nondensity parcel for a well and septic area supports development and is tantamount to development of Parcel A. The Petitioner produced no evidence nor legal principles to refute this logical explanation.

Mr. Solomon also indicated his concern that a decision in favor of the Petitioner in this case would produce adverse and unintended effects throughout the County, as well as at the instant site.

Mr. Solomon described the reasons for the RC 4 designation on both the .494 acre site and the nondensity parcel. He was the only witness at the hearing familiar with Little Deer Creek, and explained its significance to watershed protection in Baltimore County. Moreover, Mr. Solomon articulated acceptable farming uses for the sites. Furthermore, his statement that other RC 4 uses for the .494 acre site were feasible without infringement on the nondensity parcel was unchallenged by the Petitioner.

Mr. Solomon also noted that the Petitioner did not exhaust all septic system options on the .494 acre parcel, nor offer evidence to that effect. The witness suggested alternative septic systems which the Petitioner could attempt on the .494 acre parcel itself. The Petitioner never testified on direct or redirect that he availed himself of these options.

Thus Mr. Solomon was most persuasive in (1) placing the Petitioner's request in the context of the historic development of the RC 2 and RC 4 zones, (2) illustrating the practical application of the purpose and effect of these zones, and (3) interpreting the

zoning regulations consistently with the purposes of the RC 2 and RC 4 legislation. Moreover, Mr. Solomon was able to articulate alternative practical suggestions for use of the .494 acre parcel without contravening the intent of the RC 2 and RC 4 zones.

By letter to the Board, Valleys Planning Council concurred with the interpretation and intent of the applicable RC zones and the nondensity designation as stated by Mr. Solomon. Valleys Planning Council also expressed deep concern for the unfavorable effect this decision may have on other sites in the RC zones throughout the northern County.

Likewise, a concern with the impact of development in the resource sensitive RC 2 and RC 4 zones at this site, was underscored by Wallace Lippincott, Director of Agricultural Preservation for DEPRM. His comments are part of the Board's file.

On the other hand, the Petitioner's land planning witness, Jeff Long, gave no testimony relevant to the issues in the case. His opinion on lot line adjustments is inapplicable to the facts of both the instant case and the 1993 subdivision case. Moreover, he offered no reference to a zoning regulation authorizing such a procedure. The point of fact is that the 1.47 acre parcel was designated nondensity in 1993 for a specific purpose. The Petitioner is now attempting to circumvent that purpose and develop the site.

IS THE .494 ACRE PARCEL A LEGAL BUILDING LOT?

The Petitioner has the burden of proving that the .494 acre RC 4 parcel is a legal building lot. The creation of that parcel

within the applicable zoning regulations requires a careful review of the facts and zoning history of this parcel as well as compliance with the applicable zoning regulations. It is submitted that the Petitioner failed to meet this burden.

The subject site was apparently created from a larger tract by deed in 1958. The Petitioner submitted no evidence of a validly approved subdivision to create this site. At its creation, the site was used for a commercial operation. At certain times, it was rezoned to RC 4 and the commercial use abandoned.

In 1970, Bill #100 established two rural zones in Baltimore County. The most common was R.D.P. (Rural Deferred Planning). (The other was R.S.C (Rural-Suburban: Conservation). Each had a one acre minimum lot area. In 1975, Bill #98 amended drastically the rural zone system and created the R.C. zones as we know them today, with some minor subsequent modifications. The minimum lot area was increased to two acres for the RC 2 zone and three acres for the RC 4 zone. The minimum lot requirements were subsequently modified but never relinquished. Currently, the RC 2 zone requires a one acre minimum, and an RC 4 lot of less than six acres cannot be subdivided.

In addition, certain height and area requirements for the RC 4 zone are set forth in BCZR 1A03.4. Certain older lots of record are exempted if specific requirements are met under BCZR 1A03.4B 6. Such lots must be approved by the Baltimore County Office of Planning and Zoning. The Petitioner suggested qualification under BCZR 1A03.4B 6 but failed to produce evidence of OPZ approval.

In his Petitions and at the Board's hearing, the Petitioner sought approval of development rights on the .494 acre parcel under alternative theories, perhaps hoping an accumulation of extraneous information would somehow gain approval by quantity, if not by quality. The efficacy was obscure, at best.

For instance, the Petitioner's engineer admitted that the building envelope as presented would require changes, suggesting that the site plan in its present form is unacceptable, if not illegal. Further, the Petitioner's engineer admitted the current site plan was in violation of provisions of the 1993 approved subdivision plat, which he dismissed as "wrong". The Petitioner's witnesses failed to explain this inconsistency. In addition, under cross-examination, the Petitioner's engineer admitted that more than 25% of the natural vegetation would be destroyed, in violation of BCZR 1A03.4B.3. Also, the Petitioner's witnesses failed to clearly state that less than 10% of the site, including the roadway, would be covered by impermeable surface, as required by BCZR 1A03.4B.3.

Finally, it must be noted that Harris Mill Road bisects the site, which reduces the building area to less than the .494 acres. As noted in the Baltimore County Interoffice Correspondence of the Chief of the Developers Engineering Section, which is part of the Board's file, both West Liberty Road and Harris Mill Road will be improved as 40-foot streets. They are shown as 25-foot streets on Petitioner's Exhibit 1. Thus the .494 acres will be further reduced, resulting in even more overcrowding of the land if the

Petitions are granted.

This issue of overcrowding was stated in a letter dated October 20, 1995 to the Board by Francis J. Velez, a homeowner in the area who had to be out of town at the time of the hearing. Doctor Velez noted that "this area has been developed to its maximum. . ." He also pointed out the proximity of Deer Creek to the site and the "extensive developments that have threatened the very essence of the community."

In summary, the Petitioner has failed to satisfactorily correlate the history of his site with the applicable zoning regulations. It is unclear whether he can build within the parameters of the applicable height and area restrictions, or even if he has a legal right to build at all on this .494 acre parcel.

Moreover, in order to grant a variance, the Petitioner must comply with Cromwell v. Ward, 102 Md. 691 (1995). The Petitioner has failed to prove that this site is unique compared to other 1/2 acre sites in the RC 4 zone. Nor has the Petitioner established practical difficulty since other uses for the site exist.

The Petitioner's request is an abuse of the zoning process. He is attempting to transform a bargain purchase of an undersized parcel, which may not qualify as a legal building lot, into a profitable situation, at the expense of Parcel A, on which development is prohibited.

The Board must recognize that the Petitioner, a real estate broker and developer, proceeded to settlement without contingencies for zoning approval, a successful percolation test and suitable

well location. He cannot now claim relief from such an imprudent course by an attempted abuse of the zoning regulations, and a transgression of the spirit and intent of the RC zones. As was stated in Marathon, supra at 755, "[A] Purchaser of land is expected to make intelligent inquiry into land uses permitted and the effect that zoning has produced on property and on tract of which it was once a part, and purchaser's reliance on bare evidence of fee simple title will not afford ground for relief from zoning restrictions."

In summary, the paramount issue in this case is whether the Petitioner can encroach upon the nondensity parcel. Clearly development as proposed by the Petitioner was not permitted in the 1993 Order and Opinion of the Deputy Zoning Commissioner. It is not authorized by the zoning regulations and is inconsistent with the spirit and intent of the RC zones. Obviously, by disregarding the purpose of Baltimore County zoning regulations, the Petitioner is attempting to gain benefits from the .494 acre parcel far beyond the value indicated by the \$3000 purchase price. Such actions cannot be sanctioned by the Board of Appeals and the Petitions must be denied.

Respectfully submitted,



Peter Max Zimmerman

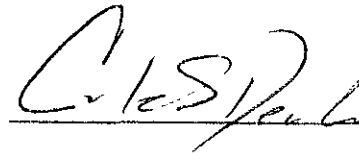
People's Counsel for

Baltimore County

Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204

(410) 887-2188

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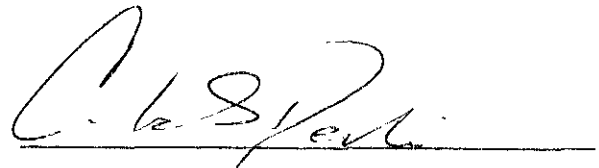


Carole S. Demilio

Deputy People's Counsel

Certificate of Mailing

The undersigned hereby certifies that a copy of this Memorandum was mailed this 15th day of November, 1995, to Howard Alderman, Esquire, 305 West Chesapeake Avenue, Towson, MD 21204, attorney for Petitioner.



IN RE: PETITIONS FOR SPECIAL HEARING * BEFORE THE
 AND VARIANCE - NW/S Liberty Rd., * DEPUTY ZONING COMMISSIONER
 340' N of c/l of Harris Mill Rd. (21300 West Liberty Road)
 7th Election District * OF BALTIMORE COUNTY
 3rd Councilmanic District * Case Nos. 95-263-SPH,
 Todd Morrill 95-264-SPH, and 95-265-A
 Petitioner *

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as combined Petitions for Special Hearing and Variance for that property known as 21300 West Liberty Road and Parcel "A" adjacent thereto, located in the vicinity of Gorsuch Mills in northern Baltimore County. The Petitions were filed by the owner of the property, Todd Morrill, through his attorney, Howard L. Alderman, Jr., Esquire. In Case No. 95-263-SPH, the Petitioner seeks approval of the residential use of an existing lot created prior to the adoption of the R.C zones for one single family dwelling and to determine that the building setback requirements of Section 1A03.4.B.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) are applicable to the subject property, or in the alternative, should this Deputy Zoning Commissioner determine that the previously adopted setback requirements of Section 1A03.4.B.4, per Bill No. 98, 1975, are applicable, consideration of the Petition for Variance in Case No. 95-265-A. In Case No. 95-264-SPH, the Petitioner seeks a modification of the relief granted in prior Case No. 93-289-SPH to permit a well and septic system to be located on Parcel "A", which is a residentially zoned, non-density parcel adjoining 21300 West Liberty Road. Lastly, in the event alternative special hearing relief is granted in Case No. 95-263-SPH, the Petitioner seeks relief, pursuant to Case No. 95-265-A, from Section 1A03.4.B.4 of the B.C.Z.R. to permit a

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front building setback of 30 feet in lieu of the required 100 feet from the centerline of a street; to permit a left side yard setback of 50 feet in lieu of the 100 feet required from the centerline of a street; a right side yard setback of 25 feet in lieu of the 50 feet required from a lot line, and a rear yard setback of 25 feet in lieu of the 50 feet required from a lot line other than a street line, for the construction of one single family dwelling on an existing lot of record which was recorded prior to the adoption of the R.C. zones. The subject property and relief sought are more particularly described on the site plans submitted with each Petition filed and marked into evidence respectively as Petitioner's Exhibits 1.

Appearing at the hearing held on behalf of these Petitions were Todd Morrill, property owner, Howard L. Alderman, Jr., Esquire, attorney for the Petitioner, and Geoffrey Schultz, Professional Engineer with McKee and Associates, Inc., who prepared the site plans submitted with these Petitions. There were no Protestants present.

The properties which are the subject of these requests include a 0.494 acre parcel of land, known as 21300 West Liberty Road, and an adjoining parcel comprised of 1.47 acres, known as Parcel "A" of the subdivision of Corsuch Hills. Parcel "A" is split zoned R.C. 2 and R.C. 4, while the property at 21300 West Liberty Road is zoned R.C. 4. The Petitioner is desirous of developing the property at 21300 West Liberty Road with a single family dwelling and locating the well and septic reserve area for this dwelling on the adjoining Parcel "A". The property at 21300 West Liberty Road failed the percolation test required for a well and septic system. It should be noted that Parcel "A" was the subject of prior Case

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No. 93-289-SPH in which this parcel was approved for non-density purposes by this Deputy Zoning Commissioner on May 25, 1993.

At the onset of the hearing on the instant matter, Counsel for the Petitioner raised a Motion to Dismiss the variance requested pursuant to Case No. 95-265-A, inasmuch as the dwelling proposed to be constructed at 21300 West Liberty Road meets all of the setback requirements imposed by its R.C. 4 zoning classification. Therefore, Mr. Alderman argued that the requested variance should be dismissed accordingly.

As to the special hearing relief sought by the Petitioner, it was clear from the proffered testimony presented by Mr. Alderman that the property at 21300 West Liberty Road has existed since prior to the establishment of the R.C. 4 zone and that the Petitioner has the right to construct a dwelling thereon. Furthermore, as to the alternative relief sought in Case 95-263-SPH, inasmuch as the lot on which the Petitioner wishes to construct his home would not perc, the Petitioner is in the process of acquiring the adjoining Parcel "A" from the neighboring development of Gorsuch Hills to locate the well and septic reserve area for the proposed dwelling. As noted above, Parcel "A" consists of 1.47 acres and provides more than enough area to locate a well and septic reserve area thereon. Mr. Morrill testified that once the special hearing relief is granted, he intends to finalize the purchase of Parcel "A" and merge same with the 0.494 acre parcel at 21300 West Liberty Road to create one lot of nearly 2 acres. As noted above, Parcel "A" was the subject of prior Case No. 93-289-SPH in which this Deputy Zoning Commissioner allowed this land to exist as a non-density parcel. In the opinion of this Deputy Zoning Commissioner, the proposed use of Parcel "A" for a well and septic reserve area to serve the dwelling at 21300 West Liberty Road will not interfere

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with the openness of Parcel "A" which was the intention of creating a non-density parcel in prior Case No. 93-289-SPH. Therefore, the special hearing relief requested pursuant to Case No. 95-264-SPH shall be granted and Mr. Morrill shall be permitted to use this land for a well and septic reserve area.

Furthermore, I find that the proposed dwelling meets all setback requirements imposed by Section 1A03.4.B.2 of the B.C.Z.R., and as such, the Petition for Variance shall be dismissed as moot.

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship would result if the relief requested in the special hearing were not granted. It has been established that the requirements from which the Petitioner seeks relief would unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the relief requested will not be detrimental to the public health, safety, and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the special hearing relief should be granted and the variances dismissed as moot.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 30th day of March, 1995 that the Petition for Special Hearing in Case No. 95-263-SPH to approve the residential use of an existing lot created prior to the adoption of the R.C zones for one single family dwelling, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the building setback requirements of Section 1A03.4.B.2 of the Baltimore County Zoning Regulations (B.C.Z.R.)

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Date

By

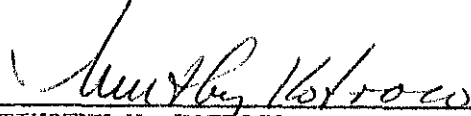
are applicable to the subject property, and as such, the Petition for Special Hearing in Case No. 95-263-SPH, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Special Hearing in Case No. 95-264-SPH to permit a modification to the relief granted in prior Case No. 93-289-SPH to permit a well and septic system to be located on Parcel "A", an adjoining residentially zoned, non-density parcel, in the location shown on Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restriction:

- 1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.

IT IS FURTHER ORDERED that the Petition for Variance in Case No. 95-265-A seeking relief from Section 1A03.4.B.4 of the B.C.Z.R. to permit a front building setback of 30 feet in lieu of the required 100 feet from the centerline of a street; to permit a left side yard setback of 50 feet in lieu of the 100 feet required from the centerline of a street; a right side yard setback of 25 feet in lieu of the 50 feet required from a lot line, and a rear yard setback of 25 feet in lieu of the 50 feet required from a lot line other than a street line, for the construction of one single family dwelling on an existing lot of record which was recorded prior to the adoption of the R.C. zones, be and is hereby DISMISSED AS MOOT.

TMK:bjs


TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

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Date

By

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning



Suite 112 Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

Howard L. Alderman, Jr., Esquire
Levin & Gann
305 W. Chesapeake Avenue
Towson, Maryland 21204

RE: PETITIONS FOR SPECIAL HEARING AND VARIANCE
NW/S Liberty Road, 340' N of c/l of Harris Mill Road
(21300 West Liberty Road and Parcel "A" of Gorsuch Hills)
7th Election District - 3rd Councilmanic District
Todd Morrill - Petitioner
Case Nos. 95-263-SPH, 95-264-SPH, and 95-265-A

Dear Mr. Alderman:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petitions for Special Hearing have been granted and the Petition for Variance dismissed as moot in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Zoning Administration and Development Management office at 887-3391.

Very truly yours,

A handwritten signature in cursive script, reading "Timothy M. Kotroco".

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

cc: Mr. Todd Morrill
1248 Lower Glencoe Road, Sparks, Md. 21152

Mr. Geoffrey Schultz
McKee & Associates, Inc., 5 Shawan Road, Hunt Valley, Md. 21030

People's Counsel

File

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Petition for Special Hearing

95-263-SPH

to the Zoning Commissioner of Baltimore County

for the property located at 21300 West Liberty Road E.D. 7
 which is presently zoned RC-4

This Petition shall be filed with the Office of Zoning Administration & Development Management.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve the residential use of an existing lot created prior to the adoption of the RC zones for one single family dwelling and to determine that the building setback requirements of BCZR Section 1A03.4.B.2 are applicable to the subject property, or in the alternative, if the Commissioner determines that the previously adopted setback requirements of BCZR § 1A03.4.B.4 (per Bill No. 98, 1975) are applicable, consideration of the Petition for Variance filed herewith.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Special Hearing advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contract Purchaser/Lessee:

(Type or Print Name)

Signature

Address

City

State

Zipcode

Attorney for Petitioner:

Howard L. Alderman, Jr.

(Type or Print Name)

Signature

Levin & Gann

305 West Chesapeake Avenue

Address

Towson, Maryland

Phone No.

State

Zipcode

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Legal Owner(s):

Todd Morrill

(Type or Print Name)

Signature

(Type or Print Name)

Signature

1248 Lower Glencoe Road

Address

296-8903

Phone No

Sparks, Maryland 21152

City

State

Zipcode

Name, Address and phone number of representative to be contacted.

McKee & Associates, Inc.

Name

527-1555

5 Shawan Road Hunt Valley, Maryland

Address

21030

Phone No

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for hearing

the following dates

Next Two Months

ALL

OTHER

REVIEWED BY: RIT

DATE

1-20-95

ITEM # 253

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ORDER RECEIVED FOR FILING
 Date 3/31/95
 By [Signature]



75-263-SPH

MCKEE & ASSOCIATES, INC.

Engineering - Surveying - Real Estate Development

SHAWAN PLACE, 5 SHAWAN ROAD

HUNT VALLEY, MARYLAND 21030

Telephone: (410) 527-1555

Facsimile: (410) 527-1563

January 17, 1995

ZONING DESCRIPTION

PARCEL "A"

GORSUCH HILLS SUBDIVISION

SEVENTH ELECTION DISTRICT

Beginning at a point which is North 55° 43' 45" West 108.00 feet from the west side of West Liberty Road, which is 33.95 feet wide at a distance of 340 feet, more or less, north of the center line of Harris Mill Road; thence along the eight following bearings and distances: South 38° 02' 46" West 175.85 feet, North 69° 44' 54" West 65.92 feet, North 02° 58' 37" East 132.01 feet, North 21° 20' 19" West 145.27 feet, North 42° 35' 21" West 384.62 feet, North 49° 02' 27" West 172.47 feet, South 52° 42' 24" East 456.26 feet, and South 22° 26' 04" East 158.21 feet to the place of beginning

Also known as Parcel "A" of the "Gorsuch Hills" subdivision as shown on the approved Minor Subdivision Plan No. 94-095 MP and located in the Seventh Election District.

ITEM # 253, 254 & 255

UNDER ONE OWNER

REQUEST HEARING
SCHEDULED AT THE
SAME TIME



1/23/95

ITEM # 253

Regt.

MICROFILMED

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

95-263-SPH

District 7th

Date of Posting 2/10/95

Posted for: Special Hearing

Petitioner: Todd Morrill

Location of property: 21300 W. Liberty Rd, Nw/s

Location of Signs: Facing road way on property being zoned

Remarks: _____

Posted by M. Morrill
Signature

Date of return: 2/17/95

Number of Signs: 1

MICROFILMED

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204 or Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

Case: #95-263-SPH
(Item 253)
21300 W. Liberty Road
NW/S W. Liberty Road,
208' E of c/l Harris Mill
Road
7th Election District
3rd Councilmanic
Legal Owner(s):

Todd Morrill
Hearing: Tuesday,
February 28, 1995 at
10:00 a.m. in Rm. 118, Old
Courthouse.

Special Hearing to approve
the residential use of an exist-
ing lot created prior to the adop-
tion of R.C. zones for one single
family dwelling and to de-
termine that the building
setback requirements of BCZR
Section 1A03.4.B.2 are ap-
plicable to the subject property;
or in the alternative, if the Com-
missioner determines that the
previously adopted setback re-
quirements of BCZR Section
1A03.4.B.4 (per Bill No.
98,1975) are applicable, con-
sideration of the Petition for
variance filed herewith.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

NOTES: (1) Hearings are Handi-
capped Accessible; for special ac-
commodations Please Call
387-3353.

(2) For information concern-
ing the File and/or Hearing, Please
Call 887-3391.
2/136 February 9.

CERTIFICATE OF PUBLICATION

TOWSON, MD., 2/10, 1995

THIS IS TO CERTIFY, that the annexed advertisement was
published in THE JEFFERSONIAN, a weekly newspaper published
in Towson, Baltimore County, Md., once in each of 1 successive
weeks, the first publication appearing on 2/9, 1995.

THE JEFFERSONIAN,

A. Henrickson

LEGAL AD. - TOWSON

MICROFILMED



Baltimore County
Zoning Administration &
Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt
95-263-SPH

Account: R-001-6150

Number # 253
B1

Date

1-20-95

TODD MORRILL

21300 West Liberty Rd. 1248 Lander Glenade.
~~SPARKS, MD~~ SPARKS MD 21152

0.30 - SPH : \$50.00

0.80 - SIGN : \$35.00

TOTAL : \$85.00

MICROFILMED

845 011

12/10/2003 09:41 AM
BY 1003430001 20 10

Please Make Checks Payable To: Baltimore County

Cashier Validation

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

95-263-SPH
264-SPH
265-17

District 7th Date of Posting 5/6/95

Posted for: Appeal

Petitioner: Todd Morrill

Location of property: NW/4 W. Liberty Rd, 213000,

Location of Signs: Facing roadway, on property being appealed

Remarks: _____

Posted by M. H. H. H. Date of return: 5/12/95
Signature

Number of Signs: 1

MICROFILMED



Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County Zoning Regulations require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property and placement of a notice in at least one newspaper of general circulation in the County.

This office will ensure that the legal requirements for posting and advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements.

PAYMENT WILL BE MADE AS FOLLOWS:

- 1) Posting fees will be accessed and paid to this office at the time of filing.
- 2) Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper.

NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

ARNOLD JABLON, DIRECTOR

For newspaper advertising:

Item No.: 253, 254, 255 (3 ITEMS)

Petitioner: TODD MORRILL

Location: 21300 WEST LIBERTY RD & PARCEL "A" GORSUCH HILLS,
West Liberty Rd E.D. 7

PLEASE FORWARD ADVERTISING BILL TO:

NAME: TODD MORRILL

ADDRESS: 1298 LOWER GLENVIEW LN

SPARKS, MD 21152

PHONE NUMBER: 296-8903

TO: PUTUXENT PUBLISHING COMPANY
February 9, 1995 Issue - Jeffersonian

Please forward billing to:

Todd Morrill
1248 Lower Glencoe Road
Sparks, MD 21152
296-8903

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in
Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204
or
Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 95-263-SPH (Item 253)
21300 W. Liberty Road
NW/S W. Liberty Road, 208' E of c/l Harris Mill Road
7th Election District - 3rd Councilmanic
Legal Owner(s): Todd Morrill
HEARING: TUESDAY, FEBRUARY 28, 1995 at 10:00 a.m. in Room 118, Old Courthouse.

Special Hearing to approve the residential use of an existing lot created prior to the adoption of R.C. zones for one single family dwelling and to determine that the building setback requirements of BCZR Section 1A03.4.B.2 are applicable to the subject property; or in the alternative, if the Commissioner determines that the previously adopted setback requirements of BCZR Section 1A03.4.B.4 (per Bill No. 98,1975) are applicable, consideration of the Petition for Variance filed herewith.

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 887-3391.

MICROFILMED

Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

FEBRUARY 2, 1995

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in
Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204
or
Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 95-263-SPH (Item 253)

21300 W. Liberty Road

NW/S W. Liberty Road, 208' E of c/l Harris Mill Road

7th Election District - 3rd Councilmanic

Legal Owner(s): Todd Morrill

HEARING: TUESDAY, FEBRUARY 28, 1995 at 10:00 a.m. in Room 118, Old Courthouse.

Special Hearing to approve the residential use of an existing lot created prior to the adoption of R.C. zones for one single family dwelling and to determine that the building setback requirements of BCZR Section 1A03.4.B.2 are applicable to the subject property; or in the alternative, if the Commissioner determines that the previously adopted setback requirements of BCZR Section 1A03.4.B.4 (per Bill No. 98,1975) are applicable, consideration of the Petition for Variance filed herewith.

A handwritten signature in cursive script, reading "Arnold Jablon".

Arnold Jablon
Director

cc: Todd Morrill
Howard L. Alderman, Jr., Esq.
McKee & Associates, Inc.

NOTES: (1) ZONING SIGN & POST MUST BE RETURNED TO RM. 104, 111 W. CHESAPEAKE AVENUE ON THE HEARING DATE.
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.



Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

July 18, 1995

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

	TODD MORRILL -Petitioner
	NW/s of W. Liberty Road, 208' E of c/l Harriss
	Mill Road (21300 W. Liberty Road)
	7th Election District
	3rd Councilmanic District
95-263-SPH	SPH -Approval of residential use of existing
	lot created prior to R.C. zones; determine
	building setbacks
95-264-SPH	SPH -Modification of relief granted in 93-289-
	SPH /well & septic
95-265-V	VAR -Building, side & rear yard setbacks
	 3/30/95 -D.Z.C.'s Order in which Petitions for
	Special Hearing were GRANTED and Petition for
	Variance DISMISSED as moot.

ASSIGNED FOR: WEDNESDAY, OCTOBER 25, 1995 at 10:00 a.m.

cc: People's Counsel for Baltimore County Appellant

Howard L. Alderman, Jr., Esquire	Counsel for Petitioner
Mr. Todd Morrill	Petitioner

Mr. Geoffrey Schultz
McKee & Associates, Inc.

Pat Keller
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr. /PDM
Docket Clerk /PDM
Arnold Jablon, Director /PDM

Kathleen C. Weidenhammer
Administrative Assistant

PLEASE RETURN SIGN AND POST TO ROOM 49 ON DAY OF HEARING.

MICROFILMED

Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

February 23, 1995

Howard L. Alderman, Jr., Esquire
Levin and Gann
305 West Chesapeake Avenue
Towson, Maryland 21204

RE: Item No.: 253
Case No.: 95-263-SPH
Petitioner: Todd Morrill

Dear Mr. Alderman:

The Zoning Advisory Committee (ZAC), which consists of representatives from Baltimore County approving agencies, has reviewed the plans submitted with the above referenced petition. Said petition was accepted for processing by, the Office of Zoning Administration and Development Management (ZADM), Development Control Section on January 20, 1995.

Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties; i.e., zoning commissioner, attorney, petitioner, etc. are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. Only those comments that are informative will be forwarded to you; those that are not informative will be placed in the permanent case file.

If you need further information or have any questions regarding these comments, please do not hesitate to contact the commenting agency or Joyce Watson in the zoning office (887-3391).

Sincerely,

W. Carl Richards, Jr.
W. Carl Richards, Jr.
Zoning Supervisor.

WCR/jw
Attachment(s)

RECEIVED



BALTIMORE COUNTY, MARYLAND
I N T E R O F F I C E C O R R E S P O N D E N C E

TO: Arnold Jablon, Director DATE: Feb. 13, 1995
Zoning Administration and Development Management

FROM: Robert W. Bowling, P.E., Chief
Developers Engineering Section

RE: Zoning Advisory Committee Meeting
for February 13, 1995
Item No. 253

The Developers Engineering Section has reviewed the subject zoning item. West Liberty Road is an existing road, which shall ultimately be improved as a 40-foot street cross-section on a 60-foot right-of-way.

Harris Mill Road is an existing road, which shall ultimately be improved as a 40-foot street cross-section on a 60-foot right-of-way.

In accordance with Bill No. 56-82, filling within a flood plain is prohibited.

Per Topo Sheet NE 38B, dated April 1961, there is an existing building on this lot. Please clarify.

RWB:sw

MICROFILMED

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Zoning Administration &
Development Management

FROM: Pat Keller, Director
Office of Planning and Zoning

DATE: February 13, 1995

SUBJECT: 21300 West Liberty Rd.

INFORMATION:

Item Number: (253) 254, and 255

Petitioner: Todd Morrill

Property Size:

Zoning: RC-4

Requested Action: Special Hearing & Variance

Hearing Date: / /

SUMMARY OF RECOMMENDATIONS:

Staff has met with the applicant's representatives, Mr. Schultz and Mr. Alderman, to discuss the requested relief. While at first the request appears unusually complex, the applicant essentially desires to develop an undersized, previously recorded lot and to locate private utilities on adjacent land, known as Tract "A".

Should there not be a need for a variance and the provisions of Section 304 are met, staff recommends approval of the request since both the subject lot and Tract "A" are owned by the petitioner. It is recommended, however, that a restriction be placed in the order to insure that access to the graveyard is provided.

Prepared by: Jeffrey M. Long

Division Chief: Gary L. Krum

PK/JL

MICROFILMED



**Maryland Department of Transportation
State Highway Administration**

O. James Lighthizer
Secretary

Hal Kassoff
Administrator

2-7-95

Ms. Joyce Watson
Zoning Administration and
Development Management
County Office Building
Room 109
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Baltimore County
Item No.: \$253 (RT)

Dear Ms. Watson:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not effected by any State Highway Administration project.

Please contact Bob Small at 410-333-1350 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

Bob Small

for

Ronald Burns, Chief
Engineering Access Permits
Division

BS/

My telephone number is _____

MICROFILMED

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

Baltimore County Government
Fire Department



700 East Joppa Road Suite 901
Towson, MD 21286-5500

(410) 887-4500

DATE: 02/07/95

Arnold Jablon
Director
Zoning Administration and
Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP-1105

RE: Property Owner: SEE BELOW

LOCATION: DISTRIBUTION MEETING OF FEB. 6, 1995.

Item No.: SEE BELOW

Zoning Agenda:

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

B. The Fire Marshal's Office has no comments at this time,
IN REFERENCE TO THE FOLLOWING ITEM NUMBERS: 246, 252, 253, 254, 255,
256, 257, 258, 259, 260, 261 AND 263.

RECEIVED

FEB 8 1995

ZADM

REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office, PHONE 887-4881, MS-1102F

cc: File

MICROFILM

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT
INTER-OFFICE CORRESPONDENCE

TO: Mr. Arnold Jablon, Director February 23, 1995
Zoning Administration and
Development Management

FROM: J. Lawrence Pilson JLP/lms
Development Coordinator, DEPRM

SUBJECT: Zoning Item #253, 254, 255 - Gorsuch Hills Par. A
21300 West Liberty Road
Zoning Advisory Committee Meeting of February 6, 1995

Agricultural Preservation Program

This request has been reviewed for prime and productive and the proposal would be directly detrimental to agricultural resources in the area.

Ground Water Management

Revised site plans are required and a well must be drilled which meets the minimum yield of one gallon per minute prior to approval of a building permit.

JLP:sp

GORSUCH/DEPRM/TXTSBP

RECEIVED
FEB 24 1995


ZADM

MICROFILMED

INTER-OFFICE CORRESPONDENCE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND RESOURCE MANAGEMENT

TO: Zoning Commissioner

DATE: February 28, 1995

FROM: Wally Lippincott, Jr., Agricultural 
Preservation

Re: Zoning Item # 253, 254, 255 - Gorsuch Hills Par. A.
21300 West Liberty Road

I wish to amend the comment that I made regarding this request and provide a brief explanation. I apologize for the lateness of this change and hope that you will consider this comment.

The original comment erroneously said that this proposal would have a "direct" detrimental impact on the agricultural resources of the area. This is incorrect the comment should read, " the proposed request may have an indirect detrimental impact on the agricultural resources of this area."

The point is a concern for the use of nondensity parcels zoned RC 2 to be used for providing septic and well in order to support additional development in a RC 2 or RC 4 zone. There is no direct negative impact on agricultural resources in this case, however, as the existing lot and the proposed additional ground is too small to support agricultural activities. The concern is for supporting additional density and the indirect impact of additional development in the resource sensitive RC 2 and RC 4 zoned areas. These areas were zoned for the protection of agricultural and watershed resources, respectively.

cc. Development Review Section

MICROFILMED

10/13/94
To: MSK
10/13/94 ucn
\$ at cashier

MCKEE & ASSOCIATES, INC.

Engineering - Surveying - Real Estate Development

SHAWAN PLACE, 5 SHAWAN ROAD

HUNT VALLEY, MARYLAND 21030

Telephone: (410) 527-1555

Facsimile: (410) 527-1563

October 11, 1994

Mr. Arnold Jablon, Director
Office of Zoning Administration
and Development Management
Baltimore County Courts Office
401 Bosley Avenue
Towson, Maryland 21204

Re: 0.5 Acres; Located North Side of
West Liberty and Harris Mill Roads
D-7; TA #07-16-60055

Dear Mr. Jablon:

We are writing to request an opinion from your office regarding the above listed property. Currently, we are representing the owner of the property who wishes to develop the lot for a single family dwelling. The property is constricted by spatial setback requirements from existing septic systems, property lines, and floodplains to the proposed dwelling, well, and septic areas.

Our client has contacted the adjacent land owner to the north and has made arrangements to purchase "Parcel A" of the Gorsuch Hills subdivision to utilize it for placement of the well to support a dwelling on his lot.

The Gorsuch Hills subdivision was previously the subject of Special Hearing Case #93-289-SPH which designated "Parcel A" as a non-density parcel. We therefore would request an opinion from your office regarding the utilization of "Parcel A" to support a well site for a dwelling on our client's property, and any implications the Zoning Hearing would have on that use.

We also are requesting an opinion on property line setback requirements for the dwelling on this lot. The lot was previously improved by a general store and a mill, of which one's foundation remains along the property lines on West Liberty Road and the property of Norman and Robyn Anderson. Current setback regulations, if enforced, would render the site unbuildable without a variance. The property has been held intact since 1958 and may possibly be subject to previous property line setbacks.

RECEIVED
OCT 18 1994
ZADM

10/13/94
MICROFILMED

ITEM # 253, 254 & 255

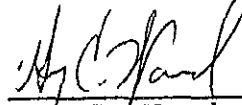
Letter to Mr. Arnold Jablon
Re: 0.5 Acres; Located North Side of
West Liberty and Harris Mill Roads
D-7; TA #07-16-60055
October 11, 1994
Page Two

We have enclosed the following for your review, a current tax map, an approved Minor Subdivision Plat of Gorsuch Hills, a copy of the Special hearing Order for Case #93-289-SPH, topography showing the existing conditions found on-site, the original deed dated 1958 which created the lot, and the required \$40.00 fee. We have also enclosed a copy of an article from a February, 1953 Baltimore Sun Magazine documenting the previous structures existence.

We appreciate your consideration in matter and look forward to hearing from you in the near future.

Very truly yours,

McKEE & ASSOCIATES, INC.



Guy C. Ward, R.S.

GCW:ajw
Enclosures

**Speed
Letter**

In the interest of speed and economy, we are replying to your letter with marginal notes. If you need more information, do not hesitate to call or write. Thank you for your interest.



October 18, 1994

•Dear Mr. Ward:

Please be advised that your proposal would require a special hearing to amend zoning case #93-289-SPH since the function of "Parcel A" will be different from what the hearing granted. Secondly, a variance will be required since the proposed building is being established from commercial to residential use with nonconforming setbacks.



Mitchell J. Kellman
Planner II

MJK:scj

ITEM# 253, 254 & 255

RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
21300 W. Liberty Road, NW/S W. Liberty Rd,	*	ZONING COMMISSIONER
208' E of c/l Harris Mill Road, 7th	*	OF BALTIMORE COUNTY
Election Dist., 3rd Councilmanic	*	CASE NO. 95-263-SPH
Todd Morrill		
Petitioners		
* * * * *		

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Peter Max Zimmerman

 PETER MAX ZIMMERMAN
 People's Counsel for Baltimore County

Carole S. Demilio

 CAROLE S. DEMILIO
 Deputy People's Counsel
 Room 47, Courthouse
 400 Washington Avenue
 Towson, MD 21204
 (410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of February, 1995, a copy of the foregoing Entry of Appearance was mailed to Howard L. Alderman, Jr., Esquire, Levin & Gann, 305 W. Chesapeake Avenue, Towson, MD 21204, attorney for Petitioner.

Peter Max Zimmerman

 PETER MAX ZIMMERMAN



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old Courthouse
400 Washington Ave.
Towson, MD 21204

(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

April 27, 1995

Arnold Jablon, Director
Zoning Administration and Development
Management Office
111 W. Chesapeake Avenue
Towson, MD 21204

RECEIVED

APR 27 1995

ZADM

Re: PETITIONS FOR SPECIAL HEARING
AND ZONING VARIANCE
21300 W. Liberty Road - NW/S W. Liberty
Road, 208' E of c/l Harris Mill Road,
7th Election Dist., 3rd Councilmanic;
AND
PETITION FOR SPECIAL HEARING
Parcel "A" Gorsuch Hills, 108' W of c/l
W. Liberty Road, 340' N of c/l Harris
Mill Road, 7th Elec. Dist., 3rd Council.
TODD MORRILL, Petitioner
Case Nos. 95-263-SPH, 95-264-SPH and
95-265-A

Dear Mr. Jablon:

Please enter an appeal of PEOPLE'S COUNSEL FOR BALTIMORE COUNTY to the County Board of Appeals from the order dated March 30, 1995 of the Baltimore County Deputy Zoning Commissioner in the above-entitled cases.

In this connection, please forward to this office copies of any papers pertinent to the appeal as necessary and appropriate.

Very truly yours,

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/caf

cc: Howard L. Alderman, Jr., Esquire

MICROFILMED

Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

May 1, 1995

Howard L. Alderman, Jr., Esquire
Levin & Gann
305 W. Chesapeake Avenue
Towson, MD 21204

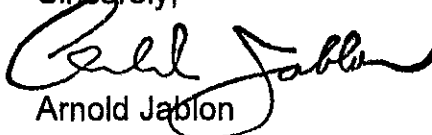
RE: Petitions for Special Hearing and
Variance
NW/S W. Liberty Road, 208 ft.
E of c/l Harris Mill Road
21300 W. Liberty Road
7th Election District
3rd Councilmanic District
Todd Morrill-Petitioner
Case Nos. 95-263-SPH,
95-264-SPH, and 95-265-A

Dear Mr. Alderman:

Please be advised that appeals of the above-referenced cases were filed in this office on April 27, 1995 by Peter Max Zimmerman, People's Counsel for Baltimore County. All material relative to the cases have been forwarded to the Board of Appeals.

If you have any questions concerning this matter, please do not hesitate to contact Julie A. Winiarski at 887-3353.

Sincerely,


Arnold Jablon

AJ:jaw
cc: Mr. Todd Morrill
Mr. Geoffrey Schultz

95 MAY -2 2:11:21



APPEAL

Petitions for Special Hearing
NW/S W. Liberty Road, 208 Ft. E of c/l Harris Mill Road
21300 W. Liberty Road
7th Election District and 3rd Councilmanic District
Todd Morrill-Petitioner
Case Nos. 95-263-SPH

Petition for Special Hearing

Description of Property

Certificate of Posting

Certificate of Publication

Entry of Appearance of People's Counsel

Zoning Plans Advisory Committee Comments

Letter to Arnold Jablon from Guy W. Ward dated October 11, 1994

Petitioner's Exhibit: 1 - Plat to Accompany Zoning Variance and Special Hearing

Deputy Zoning Commissioner's Order dated March 30, 1995 (Granted)

cc: Howard L. Alderman, Jr., Esquire, Levin & Gann, 305 W. Chesapeake
Avenue, Towson, MD 21204
Mr. Todd Morrill, 1248 Lower Glencoe Road, Sparks, MD 21152
Mr. Geoffrey Schultz, McKee & Associates, Inc., 5 Shawan Road, Hunt
Valley, MD 21030
People's Counsel, M.S. 2010

Request Notification: Patrick Keller, Director, Planning and Zoning
Timothy M. Kotroco, Deputy Zoning Commissioner
Arnold Jablon, Director of ZADM

MICROFILMED

7/18/95 -Notice of Assignment for hearing scheduled for Wednesday,
October 25, 1995 at 10:00 a.m. sent to following:

People's Counsel for Baltimore County
Howard L. Alderman, Jr., Esquire
Mr. Todd Morrill
Mr. Geoffrey Schultz
McKee & Associates, Inc.
Pat Keller
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr. /PDM
Docket Clerk /PDM
Arnold Jablon, Director /PDM

7/31/95 -Letter from Todd Morrill requesting consideration for earlier hearing date, should such become available, due to contract of sale and possible August settlement. Letter hand delivered to office; advised Mr. Morrill that the file would be noted and consideration given to his request in the event an earlier date does become available (presently scheduled for October 25, 1995).

8/15/95 -Letter to Mr. Morrill advising him that, at this time, the Board does not have an earlier date available; however, his letter will be held on file, and upon confirmation of availability of parties, an earlier date assigned, should one become available. (cc: H. Alderman and P. Zimmerman)

10/25/95 -Hearing concluded (95-263-SPH; 95-264-SPH; and 95-265-A). Memorandum due from Counsel by November 15, 1995. To be scheduled for public deliberation some time after receipt of same. (R.K.L.)

Received Memo: Alderman 11/15/95
Zimmerman 11/14/95

11/16/95 -Notice of Deliberation sent to parties; scheduled for Wednesday, December 13, 1995 at 9:00 a.m. (Copies of Memos to R.K.L.)

MICROFILMED



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

November 16, 1995

NOTICE OF DELIBERATION

Having concluded this case on October 25, 1995, and Memorandum of Counsel filed by November 15, 1995, the County Board of Appeals has scheduled the following date and time for deliberation in the matter of:

TODD MORRILL -PETITIONER/APPELLEE
CASES NO. 95-263-SPH; NO. 95-264-SPH;
AND NO. 95-265-A.

DATE AND TIME : Wednesday, December 13, 1995 at 9:00 a.m.
LOCATION : Room 48, Basement, Old Courthouse

cc: People's Counsel for Baltimore County
Howard L. Alderman, Jr., Esquire
Mr. Todd Morrill
Mr. Geoffrey Schultz
McKee & Associates, Inc.
Pat Keller
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr. /PDM
Docket Clerk /PDM
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

Kathleen C. Bianco
Administrative Assistant

R.L.K. /copied

MICROFILMED



COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: Todd Morrill -Petitioner
Case No. 95-263-SPH
Case No. 95-264-SPH
Case No. 95-265-A

DATE : December 13, 1995 at 9:00 a.m.

BOARD /PANEL : Robert O. Schuetz (ROS)
Lawrence M. Stahl (LMS)
Kristine K. Howanski (KKH)

SECRETARY : Kathleen C. Bianco
Administrative Assistant

Among those present at the deliberation were Howard L. Alderman, Jr., Esquire, on behalf of Petitioners; and Peter Max Zimmerman, People's Counsel for Baltimore County, and Carole S. Demilio, Deputy People's Counsel, Appellant.

PURPOSE --to deliberate issues and matter of petition presented to the Board; testimony and evidence taken at hearing of October 25, 1995. Written Opinion and Order to be issued by the Board.

ROS: Good morning, everyone. We are here to deliberate Case No. 95-263-SPH; Case No. 95-264-SPH; and Case No. 95-265-A, the Todd Morrill Property. The purpose of today's convening is to comply with the open meetings law as it applies to the Board of Appeals and what is going to be discussed this morning is going to be the issues considered by the members of the Board, but does not represent the official record. The official record will be the Order and Opinion that will come subsequent to this proceeding.

In chambers, we discussed that I would go first. I have to say that this is a situation that I find myself in an unusual position. Unusual in several respects. On a personal level, I generally come out here with a pretty fair direction, almost to the word, in what I want to say, when I come out here and discuss with colleagues. Generally I'm able to do that shooting from the hip. I believe that that is more in the spirit of the open deliberations. And there's going to be some of that today. But I did take a number of notes relative to this case -- leads to several questions that I hope to discuss. I believe that part of the issue is density in this particular matter. We have an undersized lot - R.C. 4; an adjoining parcel is split-zoned and the question is -- can a

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Deliberation /Todd Morrill -Petitioner
Case No. 95-263-SPH; Case No. 95-264-SPH; and Case No. 95-265-A

Petitioner use Parcel A for purposes of development on adjoining lot of record to support residential use? And the issue as an accessory was the question of what constitutes accessory use and whether or not a septic reserve area can be on the adjoining property.

This will I guess give you a clue at what I'm looking at. Density has been established; following that procedure, we have no additional density as a result of that development. But converse to that is the fact of reduced density in the area. I believe that the current zoning applies in the area, and we have testimony from Mr. Schultz that development could occur as a matter of right but for lot size. We had issues of septic reserve area on existing lot; did not perk. Had to locate on adjoining property; perfectly normal sequence of events seeking use of property. However, situation where we have less than one acre; we've got a question of whether or not Section 304 applies. We had the testimony of Mr. Schultz -- on re-cross -- the lot did not exist prior to 1955, but contends that 304 applies today; here's where we get into the interesting part of the case.

Section 304.1(a) indicates that such lot shall have been duly recorded by deed or in approved subdivision prior to 1955; but we have situation here - on its face you would say it fails. However, the lot conformed to the zoning regulations when it was created. And therefore we get to a question, which I do not believe was argued here, one that Larry Schmidt and I have battled over -- can 304 be varied under 307? What's muddled the waters frankly is the testimony of Mr. Schultz - excellent witness - raised number of good issues. Mr. Schultz indicated that the Petitioner - that there is a willingness to record. Section 304.1(c) speaks to the issue of adjoining land, where the owner of the land does not own sufficient adjoining land to comply, etc. We have exactly that, but we don't necessarily have where the recording has not taken place. In absence of recording, can we assume the continued ownership of Parcel A together with subject site, or should we turn to testimony of Mr. Schultz and say recording should have occurred prior to filing? Keeping in mind, of course, that density is at the heart of the issue - truly have not made up my mind in this matter; would like to have that question answered by my colleagues. In my view, this is one of those cases in the Board's purview that points to a hole in the wall, if you will. Petitioner has piece of property; able to develop as a matter of right; but as consequence of circumstances, may not be able to because of the ownership rights on an adjacent piece of land. That is nonsensical.

LMS: Let me just say for the record - we are here under the open deliberations rules. I've been practicing almost 25 years, and I find it's a difficult process at best. In a case like this, it makes it even more difficult because, frankly, when it's a complicated issue, triers of fact should really be able to ask stupid questions of each other; sometimes more difficult to do than at other times. I make my usual comments that our brethren in the Circuit Court should only have to do what they have mandated we must do.

My question to you - give me scenario on re-recording; if follow dotted line - if they recorded and if they did and if they did not - and define "record."

ROS: To combine lots; to re-record; per testimony of Mr. Schultz - develop as matter of right, as minor subdivisions which might go to the DRC; I would imagine DRC would have to determine; I don't know.

LMS: That would be R.C. 4 portion.

ROS: He develops as a matter of right; wherever septic field occurs on property; regulations indicate that septic field - reserve area - has to be in same zone. The case probably does not even come here. I think they are asking us to make a call as to what really applies -- without having to go the route of re-recording. What happens if we grant it? We allow him to build; at this point, I'm inclined to do just that. Question -- what happens if you do this; what is disposition of adjoining property? Asking for call under special hearing. Has pretty far-reaching effect; what is effect on similar properties? In this case we have a situation where Parcel A - lot is unusable. The real issue is what is going to happen to that property if it were used.

LMS: I have no answer either yet; thoughts occur today. What effect will this have 2 years or 6 months from now? Does it make difference? Every decision has an effect on what comes later. In the context of a special hearing - if we determine based on these particular facts and circumstances - that we allow or don't allow that it's really going to have as far reaching effect ---

KKH: This concern is more directed to density; what is the

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Case No. 95-263-SPH; Case No. 95-264-SPH; and Case No. 95-265-A

ramification of what we do; what is long-term implication for that?

ROS: In this particular case - density has already been established. I believe that if we find as People's Counsel would have us do - the converse is that we would reduce density in the area. That is not within the purview of this Board.

KKH: I'm not that concerned about any far-reaching aspects because the County Council has already said what it wants in terms of zoning. They are free to stay with that or change that. Farmers complain when change is necessary; reduces value of land. Changes can still be made, but may be a price.

LMS: I was thinking, given all different statutes and holes that may exist - we may be taking step back from it and trying not to simplify it. Comments made in one of the briefs that everybody going through definitions of density. As we take density to mean.

RECESS FOR TELEPHONE CALL; reconvened.

LMS: I was talking about trying to step back; try to simplify issues. As we are talking about density and defining density, people per unit in some manner, shape or form; is what petitioner is requesting going to change density that he already has; is it going to alter it, bring any more development than would otherwise have been applicable? If we allow this, are we increasing density simply by utilizing portion of A to provide accoutrement to what is already R.C. 4?

I'm not convinced that we are changing anything if we allow them to use, or Petitioner to use that additional property. I also ask myself the question -- in broad general terms - is the use of A for something underground, is that a "use of some sort" that causes us a problem; does it muddy the waters, simplify waters? It seems to me that although there are laws and cases - about bootstrapping commercial - I understand that - they even allow parking under some circumstances which I guess is more of a use but almost temporary use - does not change density of either of the properties; still have commercial property, if you use residential to provide parking - some cases say it's okay; not changing commercial density. In a way, I'm concurring if utilizing on a residential purpose

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to allow permitted zoning to continue without changing zoning of Parcel A; do not believe septic and well really changes nondensity.

KKH: Are we talking about density when we use nondensity lot to service another lot? In Zoning Commissioner's Policy Manual, 1A004B - in there it does appear to construe use of lots as a non-density related activity; referring to sale, transfer of small parcels in (1) - R.C. zoned parcels too small to meet lot size...may be permitted.

Then it gets into something Rob is talking about - let's say we don't have legal problem with this density issue - did that jump through the right hoops? In R.C. 2 zone, parcel could possibly be transferred; correct number of lots.

LMS: And interestingly enough, it does not increase density.

KKH: Believe that's true; appears to contemplate special hearing to assess nondensity transfers. On other hand, I have to acknowledge there could be some use of non-density land that would be so intense as to go against the objective of the regulations. Our job is not to say this use. So intense it's contrary to purpose; our job is to say - does it change density. If not, we have no reasons to interfere with it. Back to 304 -- otherwise you are in a situation where you have someone with undersized lot bootstrapping other provisions.

ROS: I think that is consistent -- your assessment is consistent with my view of the intention of 304.1c; owner does not own sufficient land to comply with area requirements; seeking a way to obtain proper use.

LMS: Without changing density.

ROS: So ends are preserved; appropriate for that area. I think that the theory is consistently applied; what you do -- in my view -- having heard the answers to my questions - I would say I would grant the special hearing; I would find as offered by Mr. Schultz - that 304 applies; that a variance from 304.1 is necessary in that the letter of the law states that the lot shall have been duly recorded by deed or subdivision prior to March 1, 1955, when in fact this was created later, but was

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not consequence at that time. To find contrary to County Council would be confiscatory; we would be reducing density and devaluing parcel A to zero.

KKH: I did not find the testimony of uses for Parcel A persuasive. It is practical difficulty.

LMS: Listening to him talk about various ways of doing it led me to conclusion - what they are doing probably makes most sense. Question - would we have no problem as for instant Parcel A which was purchased by Petitioner later on; if he did not own Parcel A, had R.C. 4 lot that did not perk - no question that he could not develop that parcel. Assuming he did not have availability of land, could do nothing with R.C. 4. The fact that he was able to purchase land - as long as nature does not change particularly, I don't think it changes anything. But another way, he should be harmed because the particular facts of this enabled Petitioner to buy adjacent piece of property and zoning does match. Why should he not be allowed to do it?

ROS: From what I'm hearing, am I to assume that we concur finding that we should be granting?

LMS: Yes. I'm coming around to it. No compelling reason why he should not be allowed to do it.

KKH: I'm in the same position at this point; I was troubled still by the first question; but it's clear -- testimony at least persuasive; could be done a number of different ways, but I think we are persuaded that it's not a density issue. That's not what's being indicated by doing this. I want to make sure that when we look at variances, we don't just run right over them.

KKH: We are not in a position where we have to consider a variance.

ROS: I actually believe they meet 304.1.

LMS: Meets setback requirements.

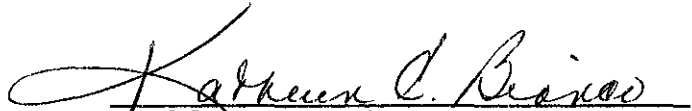
ROS: Different variance; question of whether you can vary 304. I

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think I sat on a case - granted variance from 304, but that's not before us this morning. I would say that I believe it meets 304 because of the history of the property.

Closing statement by ROS: I think we are in agreement. You should look for opinion and order. Any petition should be taken from the date of that Order and not necessarily from today's date. Thank you very kindly.

Respectfully submitted,


Kathleen C. Bianco
Administrative Assistant

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director **DATE:** September 27, 1996
Permits & Development Management

FROM: Charlotte E. Radcliffe *Car*
County Board of Appeals

SUBJECT: Closed Files: Case Nos.
95-263-SPH, 95-264-SPH and 95-265-A
TODD MORRILL - Petitioner
7th E; 3rd C

As no further appeals have been taken regarding the subject case, we are hereby closing the files and returning same to you herewith.

Attachment (Case File No. [✓]95-263-SPH, 95-264-SPH and 95-265-A)

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County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

August 15, 1995

Mr. Todd Morrill
1248 Lower Glencoe Road
Sparks, MD 21152

RE: Case No. 95-263-SPH; Case No. 95-264-SPH;
and Case No. 95-265-A /Todd Morrill -Petitioner

Dear Mr. Morrill:

The Board is in receipt of your recent correspondence in which you request consideration of an earlier hearing date for the subject matter, currently scheduled for hearing on October 25, 1995.

At this time the Board has no earlier date on its docket to which this case could be assigned. However, we will keep your letter on file in the event an appropriate date becomes available, at which time we would confirm availability of all parties.

Very truly yours,

A handwritten signature in cursive script, reading "Kathleen C. Weidenhammer".

Kathleen C. Weidenhammer
Administrative Assistant

cc: Howard L. Alderman, Jr., Esquire
Peter Max Zimmerman
People's Counsel for Baltimore County



1995 AUG 15 10 10 AM

7/3/95
Mercantile Bldg.
Tombson

Ms. Kathleen Weidenhammer
County Board of Officials

Dear Ms. Weidenhammer:

If it all possible,
I would like to move my hearing (95-263-SPH,
95-264-SPH & 95-265-V) to an earlier date.

I have a contract of sale for the property
which is supposed to settle in August.

Thank you for your consideration of my
request. Any earlier date would be appreciated.

Sincerely,
Todd Morrell

95 JUL 31 PM 11:32

RKL

BALTIMORE OFFICE
MERCANTILE BANK & TRUST BUILDING
2 HOPKINS PLAZA
9TH FLOOR
BALTIMORE, MARYLAND 21201
410-539-3700
TELECOPIER 410-625-9050

LAW OFFICES
LEVIN & GANN
A PROFESSIONAL ASSOCIATION
305 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
410-321-0600
TELECOPIER 410-296-2801

ELLIS LEVIN (1893-1960)

HOWARD L. ALDERMAN, JR.

November 15, 1995

VIA HAND DELIVERY

Robert O. Schuetz, Chairman
County Board of Appeals for Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

RE: Todd Morrill, Petitioner/Appellee
Petitions for Special Hearing & Variance
21300 West Liberty Road
Case Nos.: 95-263-SPH, 95-264-SPH & 95-265-A
Post-Hearing Memorandum

Dear Chairman Schuetz:

On behalf of my client, Mr. Todd Morrill, I am pleased to provide to the Board the enclosed original and three (3) copies of the Appellee/Petitioner's Post-Hearing Memorandum in the above-referenced cases as directed by the Board. Under copy of this letter I am providing copies to the Office of People's Counsel and Messrs. Morrill and Schultz.

I would respectfully request that the Board convene an "open deliberation" session in these cases as soon as is practicable and convenient based on the Board's schedule. Should you or the other members of the Board need any additional information in this regard, please contact me at your convenience.

Very truly yours,



Howard L. Alderman, Jr.

HLA/gk

Enclosures (4)

c (w/encl.): Mr. Todd L. Morrill
Mr. Geoffrey C. Schultz
Office of People's Counsel for Baltimore County

61 NOV 21 1995

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BALTIMORE OFFICE
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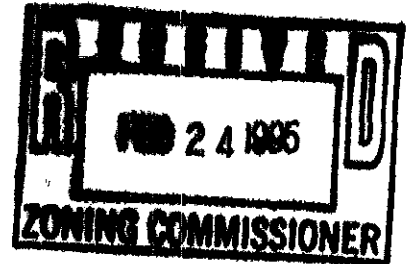
LAW OFFICES
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305 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
410-321-0600
TELECOPIER 410-296-2801

ELLIS LEVIN (1893-1960)

HOWARD L. ALDERMAN, JR.

February 16, 1995

Timothy M. Kotroco, Deputy Zoning Commissioner
Baltimore County Zoning Commissioner's Office
Old Court House
Towson, Maryland 21204



Re: Case Nos.: 95-263-SPH, 95-264-SPH, 95-265-A
Rescheduling of Hearing Time

Dear Commissioner Kotroco:

I spoke with Betty in your office earlier this week regarding the above-referenced cases. All of the cases listed pertain to the same property located at 21300 West Liberty Road and are scheduled for hearing on Tuesday, February 28, 1995 at 10:00 in room 118 of the Old Court House. I advised Betty that I am scheduled to be in the Circuit Court for Baltimore County at 9:30 that morning.

The Circuit Court hearing should be relatively quick, although as you know, you never can tell. The hearing involves oral argument only and there is no opposition on the other side. In any event, I inquired as to whether or not the above-referenced cases could be delayed until 11:00 on the same date. Betty conferred with you and indicated that you would have no problem holding the hearing at that time.

As of this writing, I am not aware of any opposition to the requested zoning relief in this case. Obviously, if I learn of any opposition between now and the time of the hearing I will advise any such persons of the rescheduled time for the hearing and provide you with a copy of that notification. Thank you for your courtesy in rescheduling these hearings.

Very truly yours,


Howard L. Alderman, Jr.

HLA/klf

cc: Mr. Todd L. Morrill
Mr. Geoffrey Schultz

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2 COLGATE DRIVE, STE 101
FOREST HILL, MD 21050
838-4118

Francis J. Velez, M.D., F.A.C.S.
FJV/mp

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**THE VALLEYS
PLANNING COUNCIL, INC.**

212 Washington Avenue
P.O. Box 5402
Towson, Maryland 21285-5402
410-337-6877
410-296-5409 (FAX)

October 20, 1995

Mr. Robert O. Schuetz
County Board of Appeals
Old Court House, Room 49
Towson, MD 21204

**Re: Todd Morrill Lot (21300 West Liberty
Road -- 95-263 SPH, 95-264-SPH, 95-265A)**

Dear Mr. Schuetz:

This case involves the placement of a septic field for a lot at 21300 West Liberty Road on an adjoining "non-density" parcel. The Valleys Planning Council opposes this use strongly.

21300 West Liberty Road is a legal lot of record. Nonetheless, it is, in fact, unable to support a dwelling, since no area has been found for a septic field on it. As it stands, it represents no more than open space. [This is confirmed, I believe, by the low purchase price: only \$3000, according to the Land Records].

The contiguous "non-density" parcel was so designated as a condition for approval of an adjacent subdivision. Such a parcel, which, by County ruling, cannot support any density, should not be used to make this lot buildable. Use of the parcel in this way amounts to using a non-density parcel to create density.

Mr. Kotroco has pointed out that the "openness" of the non-density parcel will be retained. But the immediately adjoining parcel at 21300 West Liberty will now be built on, though it would have remained open otherwise. Thus the "openness" of the neighborhood will, in fact, decrease.

I am personally aware of many undersized, substandard lots in agricultural and reservoir protection areas which may become developable if this interpretation of "non-density" is allowed. These will create areas of development at an intensity much greater than that allowed by the present Resource Conservation zoning. Certainly, this result

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would be incompatible with the intent of the legislation creating the R.C. 2 and R.C. 4 zones, which refers repeatedly to the "preservation" of natural and agricultural resources by discouraging "unsuitable types or levels of development".

Sincerely,

A handwritten signature in black ink, appearing to read "John Bernstein". The signature is fluid and cursive, with the first name "John" and last name "Bernstein" clearly distinguishable.

John Bernstein
Executive Director

cc: Hon. T. Bryan McIntire
Peter Max Zimmermann, Esq.

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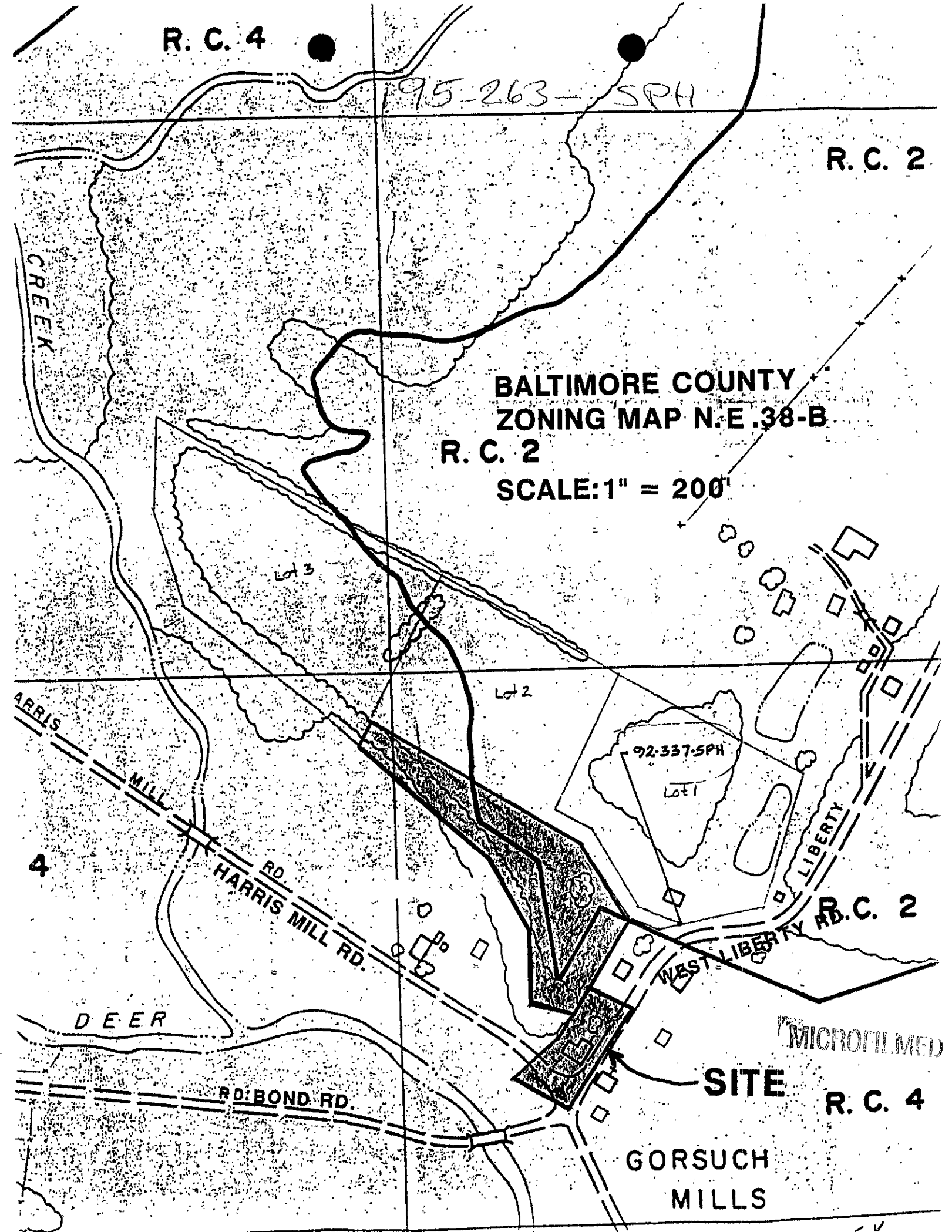
R. C. 4

195-263-SPH

R. C. 2

**BALTIMORE COUNTY
ZONING MAP N.E.38-B
R. C. 2**

SCALE: 1" = 200'



BALTIMORE COUNTY
AERIAL PHOTOGRAPH
N.E. 38-B
SCALE 1"=200'

SITE

95-263 SPH

ITEM 253

WEST LIBERTY RD.

MICROFILM



ST-3636

Notary Public & Treasurer
for Baltimore County

12/29/95

THIS DEED, Made this 7th day of December, in the year One Thousand Nine Hundred and Ninety Four, by and between DAVID W. HENNING and RICHARD W. HENNING, parties of the first part, Grantors; and TODD L. MORRILL, party of the second part, Grantee.

THE actual consideration paid or to be paid is \$78,500.00

WITNESSETH: that in consideration of the sum of SEVENTY-EIGHT THOUSAND FIVE HUNDRED AND 00/100THS DOLLARS (\$78,500.00) and other valuable considerations, the receipt whereof is hereby acknowledged, the parties of the first part do grant and convey to the said party of the second part, his personal representatives and assigns, forever, in fee simple, all those lots of ground situate in Baltimore County, in the State of Maryland, and described as follows, that is to say:

FOR LEGAL DESCRIPTION SEE ATTACHED EXHIBITS "A", "B", "C" AND "D"

BEING the same lots of ground described in a Deed dated November 27, 1991 and recorded among the Land Records of Baltimore County in Liber SM No. 8991, folio 340 was granted and conveyed by Charles Howard Bush by Ronald Maurice Thompson, his Attorney-In-Fact unto David W. Henning and Richard W. Henning, the within Grantors.

TOGETHER with the buildings and improvements thereupon; and the rights, alleys, ways, waters, privileges, appurtenances and advantages to the same belonging or in anywise appertaining.

TO HAVE AND TO HOLD the said described lot of ground and premises, unto and to the use of the said party of the second part, his personal representatives and assigns, forever, in fee simple.

AND the said Grantors covenant to warrant specially the property hereby granted and conveyed, and to execute such further assurances of said land as may be requisite.

WHENEVER used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

WITNESS the hands and seals of the said grantors:

WITNESS:

(Seal)
DAVID W. HENNING

AGRICULTURAL TRANSFER TAX
AMOUNT 3354
STAMPED 012 DATE 12/29/94
CODED F

(Seal)
RICHARD W. HENNING

GRANTORS

RECORDED IN 15111
FA 12/29/94

PETITIONER'S
EXHIBIT 3

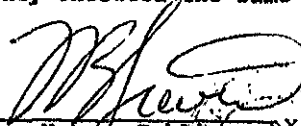
10939/305

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STATE OF MARYLAND, COUNTY OF BALTIMORE, TO WIT:

I HEREBY CERTIFY, that on this 7th day of December, 1994, before me, a Notary Public of the State aforesaid, personally appeared DAVID W. HENNING and RICHARD W. HENNING, the within named GRANTORS, known to me (or satisfactorily proven) to be persons whose names are subscribed to the within instrument, who signed the same in my presence, and acknowledged that they executed the same for the purposes therein contained.

WITNESS my hand and Notarial Seal.


Notary Public

My commission expires:

THIS IS TO CERTIFY that the within instrument was prepared by or under the supervision of the undersigned, an Attorney duly admitted to practice before the Court of Appeals of Maryland.


Howard B. Goren, Attorney

RETURN DEED TO:

SUPREME TITLE COMPANY
11403 CRONRIDGE DRIVE - SUITE 230
OWINGS MILLS, MARYLAND 21117



**Robert R. Wilson
& Associates, Inc.**

LAND SURVEYORS

P.O. Box 833
2408 Rocks Road
Forest Hill, MD 21050

Phone (410) 893-3700
Fax (410) 836-5375

**Description of
3.560 Acres of Land
Gorsuch Hills, Lot 3
7th Election District
Baltimore County, Maryland**

Beginning for the same at the beginning of South 55° 00' 00" East, 1316.44 foot line as shown on a plat entitled "Minor Subdivision, Henning Property, Gorsuch Hills" recorded or intended to be recorded among the Land Records of Baltimore County, Maryland; thence departing said point so fixed with meridian reference to deed recorded among the said Land Records in Liber 8991 at Folio 340, and binding on said plat line in part thereof

- 1) South 55° 00' 00" East, 584.47 feet; thence departing said plat line so as to cross and include a portion of the land conveyed by a deed dated November 27, 1991, by and between Charles Howard Bush, party of the first part and David W. Henning and Richard W. Henning, part of the second part, as recorded among the said Land Records in Liber 8991 at Folio 340
- 2) South 35° 00' 00" West, 287.94 feet; thence binding on and through a Common Drive and Access Easement so as to cross and include a portion of West Liberty Road
- 3) South 52° 42' 24" East, 460.00 feet;
- 4) South 22° 26' 04" East, 157.85 feet;
- 5) South 55° 43' 45" East, 118.82 feet;
- 6) South 84° 28' 59" West, 18.75 feet;
- 7) North 55° 43' 45" West, 108.00 feet;
- 8) North 22° 26' 04" West, 138.21 feet;
- 9) North 52° 42' 24" West, 456.26 feet; thence departing said Common Drive and Access Easement
- 10) South 35° 00' 00" West, 31.88 feet;
- 11) North 42° 35' 21" West, 51.59 feet;
- 12) North 46° 16' 36" West, 322.72 feet;
- 13) North 14° 09' 32" West, 189.31 feet;
- 14) North 09° 05' 28" East, 164.52 feet to the point of beginning

Containing 3.560 acres of land, more or less

Subject to conditions and restrictions as referenced on the aforementioned Plat of Minor Subdivision designated as 94-095-MP

Being a portion of the land conveyed by a deed dated November 27, 1991, by and between Charles Howard Bush, party of the first part and David W. Henning and Richard W. Henning, party of the second part, as recorded among the Land Records of Baltimore County, Maryland in Liber 8991 at Folio 340.

J.O. 9138/gjt

Robert R. Wilson
& Associates, Inc.

LAND SURVEYORS

P.O. Box 833

2408 Rocks Road

Forest Hill, MD 21050

Phone (410) 893-3700

Fax (410) 836-5375

Description of
2.679 Acres of Land
Gorsuch Hills, Lot 2
7th Election District
Baltimore County, Maryland

Beginning for the same at a point in the South 55' 00' 00" East, 1316.44 foot line as shown on a plat entitled "Minor Subdivision, Henning Property, Gorsuch Hills" recorded or intended to be recorded among the Land Records of Baltimore County, Maryland, said point being South 55' 00' 00" East, 667.48 feet from the beginning of the aforementioned plat line; thence departing said point so fixed with meridian reference to deed recorded among the said Land Records in Liber 8991 at Folio 340, and binding on said plat line in part thereof

- 1) South 55' 00' 00" East, 300.00 feet; thence departing said plat line so as to cross and include a portion of the land conveyed by a deed dated November 27, 1991, by and between Charles Howard Bush, party of the first part and David W. Henning and Richard W. Henning, part of the second part, as recorded among the said Land Records in Liber 8991 at Folio 340
- 2) South 35' 00' 00" West, 291.15 feet; thence binding on and through a Common Drive and Access Easement so as to cross and include a portion of West Liberty Road
- 3) South 52' 42' 24" East, 83.42 feet;
- 4) South 22' 26' 04" East, 157.51 feet;
- 5) South 35' 43' 45" East, 129.64 feet
- 6) South 84' 28' 59" West, 19.75 feet;
- 7) North 35' 43' 45" West, 118.82 feet;
- 8) North 22' 26' 04" West, 157.85 feet;
- 9) North 52' 42' 24" West, 460.00 feet; thence departing said Common Drive and Access Easement
- 10) North 35' 00' 00" East, 287.94 feet to the point of beginning

Containing 2.679 acres of land, more or less

Subject to conditions and restrictions as referenced on the aforementioned Plat of Minor Subdivision designated as 94-095-MP

Being a portion of the land conveyed by a deed dated November 27, 1991, by and between Charles Howard Bush, party of the first part and David W. Henning and Richard W. Henning, party of the second part, as recorded among the Land Records of Baltimore County, Maryland in Liber 8991 at Folio 340.

J.O. 9138/gjt



ROBERT R. WILSON
& ASSOCIATES, INC.

LAND SURVEYORS

P.O. Box 833
2408 Rocks Road
FOREST HILL, MD 21050

PHONE (410) 893-3700
FAX (410) 836-5375

Description of
1.470 Acres of Land
Gorsuch Hills, Parcel A
7th Election District
Baltimore County, Maryland

Beginning for the same at the point of beginning of the South 3° 02' 46" West, 175.85 foot line as shown on a plat entitled "M1 subdivision, Henning Property, Gorsuch Hills" recorded or intended to be recorded among the Land Records of Baltimore County, Maryland; thence departing said point so fixed with meridian reference to a deed recorded among the said Land Records in Liber 8991 at Folio 340 and binding on said line

- 1) South 38° 02' 46" West, 175.85 feet;
- 2) North 69° 49' 54" West, 65.92 feet;
- 3) North 02° 58' 37" East, 132.01 feet;
- 4) North 21° 20' 19" West, 145.27 feet;
- 5) North 42° 35' 21" West, 333.03 feet;
- 6) North 35° 00' 00" East, 31.88 feet; thence binding on a Common Drive and Access Easement in part thereof
- 7) South 52° 42' 24" East, 456.26 feet;
- 8) South 22° 26' 04" East, 158.21 feet to the point of beginning

Containing 1.470 acres of land, more or less

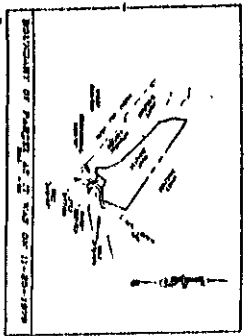
Subject to conditions and restrictions as referenced on the aforementioned Plat of Minor Subdivision designated as 94-093-MP

Being a portion of the land conveyed by a deed dated November 27, 1991, by and between Charles Howard Bush, party of the first part and David W. Henning and Richard W. Henning, party of the second, as recorded among the Land Records of Baltimore County, Maryland in Liber 8991 at Folio 340.

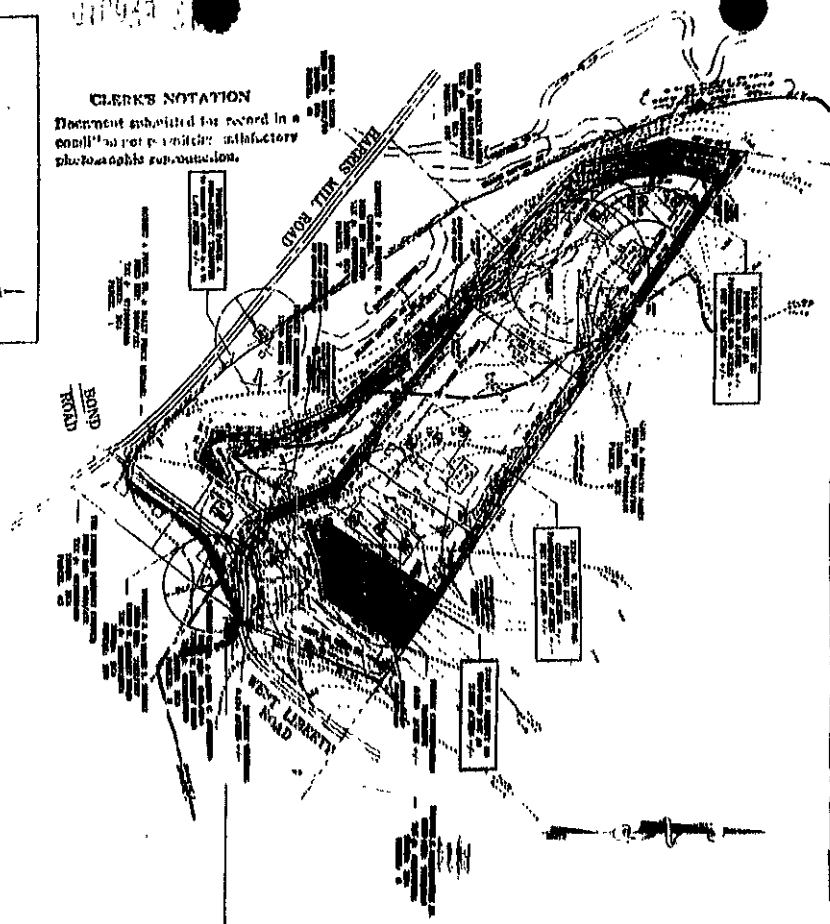
J.O. 9138/gjt

10939/309

010947



CLERKE NOTATION
Document submitted for record in a
court to set a vehicle's satisfactory
photostatic reproduction.



LEGEND
[Symbol] [Text]
[Symbol] [Text]
[Symbol] [Text]
[Symbol] [Text]



**ROBERT R. WILSON
AND ASSOCIATES, INC.**
[Address]
[Phone Number]

GORSICH HILLS
[Address]
[Phone Number]

ST-3439

PETITIONER'S
EXHIBIT

4

THIS DEED, Made this 9th day of September, in the year One Thousand Nine Hundred and Ninety Four, by and between SALLY PRICE MICHAEL, party of the first part, Grantor; and TODD MORRILL, party of the second part, Grantee.

THE actual consideration paid or to be paid is \$3,000.00

WITNESSETH: that in consideration of the sum of THREE THOUSAND AND 00/100THS DOLLARS (\$3,000.00) and other valuable considerations, the receipt whereof is hereby acknowledged, the party of the first part does grant and convey to the said party of the second part, his personal representatives and assigns, forever, in fee simple, all that lot of ground situate in Baltimore County, in the State of Maryland, and described as follows, that is to say:

BEGINNING for the same at a point in the center of West Liberty Road at the end of the second line of a lot described in a deed from Albert W. Sites and wife to Durward C. Sites and wife dated December 10, 1958 and recorded among the Land Records of Baltimore County in Liber WJR No. 3460, folio 57, thence reversing said second line and running North 56 1/2 degrees West 94 feet to the end thereof; thence binding on the land of Earl Reaps and running South 37 degrees West 100.5 feet to a stone; thence South 51 degrees West 115, more or less, to the center of Harris Mill Road; thence South 52 degrees East 110 feet binding on or about the center of said road to an iron pin, and thence running North 35 degrees East binding on or about the center of West Liberty Road a distance of 208 feet, more or less, to the point of beginning. Containing 0.494 of an acre, more or less.

BEING the same lot of ground described in a Deed dated October 1, 1973 and recorded among the Land Records of Baltimore County in Liber No. 5399, folio 121 was granted and conveyed by Hugh L. Poe and Lillian N. Poe, his wife, Dean William Kenney and Ellen Oleita Kenney, his wife, unto Robert A. Price, Sr. and Sally Price Michael, the within Grantor. The said Robert A. Price, Sr. having departed this life on or about September 30, 1991.

TOGETHER with the buildings and improvements thereupon; and the rights, alleys, ways, waters, privileges, appurtenances and advantages to the same belonging or in anywise appertaining.

TO HAVE AND TO HOLD the said described lot of ground and premises, unto and to the use of the said party of the second part, his personal representatives and assigns, forever, in fee simple.

AND the said Grantors covenant to warrant specially the property hereby granted and conveyed, and to execute such further assurances of said land as may be requisite.

WHENEVER used, the singular number shall include the plural,

the plural the singular, and the use of any gender shall be

RECEIVED FOR TRANSFER
State Department of
Assessments & Taxation
for Baltimore County

ME 10-13-94

AGRICULTURAL TRANSFER TAX
NOT APPLICABLE

SIGNATURE ME DATE 10-13-94

02AQ2ND026TL TRTX
BA C003:24PH10/12/94

\$48.00

PETITIONER'S
EXHIBIT 4

MICROFILMED

applicable to all genders.

WITNESS the hand and seal of the said grantor:

WITNESS:



 (Seal)
SALLY PRICE MICHAEL
GRANTOR

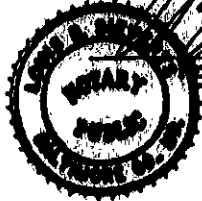
STATE OF MARYLAND, COUNTY OF BALTIMORE, TO WIT:

I HEREBY CERTIFY, that on this 9th day of September, 1994, before me, a Notary Public of the State aforesaid, personally appeared SALLY PRICE MICHAEL, the within named GRANTORS, known to me (or satisfactorily proven) to be person whose name is subscribed to the within instrument, who signed the same in my presence, and acknowledged that she executed the same for the purposes therein contained.

WITNESS my hand and Notarial Seal.

My commission expires:

11-1-94




Notary Public

THIS IS TO CERTIFY that the within instrument was prepared by or under the supervision of the undersigned, an Attorney duly admitted to practice before the Court of Appeals of Maryland.


Howard B. Goren, Attorney

RETURN DEED TO:

SUPREME TITLE COMPANY
11403 CROMBRIDGE DRIVE - SUITE 230
OWINGS MILLS, MARYLAND 21117

This Dec 1, Made this 1st day of October,

in the year one thousand nine hundred and seventy-three, by and between HUGH L. POE and LILLIAN N. POE, his wife, and DEAN WILLIAM KENNEY and ELLEN OLEITA KENNEY, his wife, all of Baltimore County, State of Maryland - - - - - , of the first part, and ROBERT A. PRICE, SR. and SALLY PRICE MICHAEL of Baltimore County, State of Maryland - - - - - of the second part.

Witnesseth, that in consideration of the sum of Five (\$5.00) Dollars and other good and valuable considerations, the receipt whereof is hereby acknowledged, - - - - - the said first parties - - - - -

do hereby grant and convey unto the said second parties, as joint tenants, and not as tenants in common - - - - - their heirs and assigns,

in fee simple, all that lot lot(s) of ground, situate, lying and being in the 7th Election District of Baltimore County - - - - - , State of Maryland, and described as follows, that is to say:—

Beginning for the same at a point in the center of West Liberty Road at the end of the second line of a lot described in a deed from Albert W. Sites and wife to Durward C. Sites and wife dated December 10, 1958 and recorded among the Land Records of Baltimore County in Liber W.J.R. No. 3460, folio 57; thence reversing said second line and running North 56½ degrees West 94 feet to the end thereof; thence binding on the land of Earl Heaps and running South 37 degrees West 100.5 feet to a stone; thence South 51 degrees West 115 feet, more or less, to the center of Harris Hill Road; thence South 52 degrees East 110 feet binding on or about the center of said road to an iron pin, and thence running North 35 degrees East binding on or about the center of West Liberty Road a distance of 208 feet, more or less, to the point of beginning. Containing 0.494 of an acre, more or less.

BEING the same property which by Deed dated August 15, 1966 and recorded among the Land Records of Baltimore County in Liber O.T.G. No. 4658, folio 243, was conveyed by David F. Hill and Eva C. Hill, his wife, unto the said Hugh L. Poe and Lillian N. Poe, his wife, Tho said

PETITIONER'S
EXHIBIT 5

WITB 1.08001

Dean William Kenney and Ellen Oleita Kenney, his wife, joined herein to grant and convey unto the said Robert A. Price, Sr. and Sally Price Michael any right, title and interest they may have under and by virtue of a recorded contract of Sale dated March 1, 1969, between Hugh L. Poe and Lillian N. Poe, his wife, and Dean William Kenney and Ellen Oleita Kenney, his wife, and recorded among the Land Records of Baltimore County in Liber O.T.G. No. 4969, folio 260.

OCT -2-73	255462#	****84.05
OCT -2-73	255462DB	****28.05
OCT -2-73	255461DE	****12.50
OCT -2-73	255460D#	****13.50

Together with the buildings and improvements thereupon erected, made or being and all and every the rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging, or anywise appertaining.

To Have and To Hold the said lot of ground and premises, above described and mentioned, and hereby intended to be conveyed; together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said Robert A. Price, Sr. and Sally Price Michael, as joint tenants, and not as tenants in common, -----
 ----- their heirs and assigns, -----
 ----- in fee simple.

And the said parties of the first part hereby covenant that they have not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that they will warrant specially the property granted and that they will execute such further assurances of the same as may be requisite.

Witness the hands and seals of said grantors

TEST:

L. Roy Y. Haile, Jr. { *Hugh L. Poe* [SEAL]
 HUGH L. POE
Lillian N. Poe (SEAL)
 LILLIAN N. POE
Dean William Kenney [SEAL]
 DEAN WILLIAM KENNEY
Ellen Oleita Kenney (SEAL)
 ELLEN OLEITA KENNEY

State of Maryland, County of Baltimore, to wit:

I HEREBY CERTIFY, That on this 1st day of October, 1973, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County of Baltimore, personally appeared Hugh L. Poe and Lillian N. Poe, his wife, and Dean William Kenney and Ellen Oleita Kenney, his wife, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained, and in my presence signed and sealed the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

John M. Dunham
 JOHN M. DUNHAM
 Notary Public

My Commission expires:

Rec'd for record OCT 2 1973 at 10 AM
 7/1/74 Per Elmer H. Kahlane, Jr., Clerk
 Mail to *John M. Dunham*
 Receipt No. *1350*

This Deed, Made this 15 1966 day of August,

in the year one thousand nine hundred and sixty-six, by and between

DAVID F. HILL and EVA C. HILL, his wife,

of Baltimore County,

in the State of Maryland, of the first part, and

HUGH L. POE and LILLIAN N. POE, his wife,

of the second part.

Witnesseth, that in consideration of the sum of Five Dollars and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said first parties

do grant and convey unto the said second parties, as tenants by the entireties, their

heirs and assigns, in fee simple, all that Lot of the ground, situate, lying and being in the 7th Election District of Baltimore County, aforesaid, and described as follows, that is to say:--

Beginning for the same at a point in the center of West Liberty Road at the end of the second line of a lot described in a deed from Albert W. Sites and wife to Durward C. Sites and wife dated December 10, 1958 and recorded among the Land Records of Baltimore County in Liber W.J.R. No. 3460, folio 57; thence reversing said second line and running North 56 1/2 degrees West 94 feet to the end thereof; thence binding on Land of Earl Heaps and running South 37 degrees West 100.5 feet to a stone; thence South 51 degrees West 115 feet, more or less, to the center of Harris Mill Road; thence South 52 degrees East 110 feet binding on or about the center of said road to an iron pin, and thence running North 35 degrees East binding on or about the center of West Liberty Road a distance of 208 feet, more or less, to the point of beginning. Containing 0.494 of an acre, more or less.

BEING the same property which by deed dated December 31, 1958 and recorded among the Land Records of Baltimore County in Liber W.J.R. No. 3470, folio 254, was conveyed by Albert W. Sites and wife to the within named grantors.



288 3 04 AUG 16

3 5.00 REC

Together with the buildings and improvements thereupon erected, made or being and all and

every the rights, alleys, way, waters, privileges, appurtenances and advantages, to the same belong-
ing, or anywise appertaining.

To Have and To Hold the said lot of ground and premises, above described and
mentioned, and hereby intended to be conveyed; together with the rights, privileges, appurtenances and
advantages thereto belonging or appertaining unto and to the proper use and benefit of the said second

parties, as tenants by the entireties, their heirs and assigns, in fee simple.

And the said parties of the first part hereby covenant that they have
not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby
conveyed; that they will warrant specially the property granted and that they will execute
such further assurances of the same as may be requisite.

Witness the hands and seals of said grantors.

TEST:

Suzanne Kreusinger
Suzanne Kreusinger

David F. Hill (SEAL)
David F. Hill

Eva C. Hill (SEAL)
Eva C. Hill

STATE OF MARYLAND, ^{HARFORD} ~~BALTIMORE~~ COUNTY, to wit:

I HEREBY CERTIFY, That on this 15th day of August,
in the year one thousand nine hundred and sixty-six, before me, the subscriber,
a Notary Public of the State of Maryland, in and for the County aforesaid,
personally appeared David F. Hill and Eva C. Hill, his wife,

the above named grantors, and they acknowledged the foregoing Deed to be their act.

As Witness my hand and Notarial Seal.

Suzanne Kreusinger
Suzanne Kreusinger Notary Public.

Rec'd for record AUG 16 1966 at 9:20 PM
Per Orville T. G. snell, Clerk
Mail to *Walter R. Hule*
Receipt No. 70412 \$ 6.00

4658/244

THIS DEED, Made this 31st day of December, 1958, by ALBERT W. SITES and ELSIE V. SITES, his wife, parties of the first part, Grantors, to DAVID F. HILL and EVA C. HILL, his wife, parties of the second part, Grantees, of Baltimore County, State of Maryland.

WITNESSETH, that in consideration of Five Dollars and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said first parties do hereby grant and convey unto the said second parties, as tenants by the entireties, their assigns, the survivor of them and the heirs and assigns of such survivor, in fee simple, all that lot of ground situate in the Seventh Election District of Baltimore County, Maryland, described as follows:

BEGINNING for the same at a point in the center of West Liberty Road at the end of the second line of a lot described in a deed from Albert W. Sites and wife to Durward C. Sites and wife dated December 10, 1958 and recorded among the Land Records of Baltimore County in Liber WJR No. 3460 folio 57, thence reversing said second line and running North 58½ degrees West 94 feet to the end thereof, thence binding on land of Earl Heaps and running South 37 degrees West 100.5 feet to a stone, thence South 51 degrees West 115 feet more or less to the center of Harris Mill Road, thence South 52 degrees East 110 feet binding on or about the center of said road to an iron pin, and thence running North 35 degrees East binding on or about the center of West Liberty Road a distance of 208 feet, more or less, to the point of beginning.

BEING part of the land which by a deed dated September 20, 1958 and recorded among the Land Records of Baltimore County in Liber GLB No. 3418 folio 437 was conveyed by William E. Brooks and wife to the within named grantors.

TOGETHER with the buildings and improvements thereon and all the rights and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the above described lot of ground and premises unto and to the proper use and benefit of the second parties, as tenants by the entireties, their assigns, the survivor of them and the heirs and assigns of such survivor, in fee simple.

AND said first parties covenant that they have done no act to encumber said land, that they will warrant specially the property hereby conveyed, and that they will execute such further assurances of said land as may be requisite.

AS WITNESS the hands and seals of the first parties:

WITNESS:

Albert W. Sites (SEAL)
Albert W. Sites

Lillian A. Kelly
Lillian A. Kelly

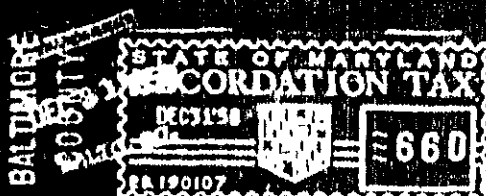
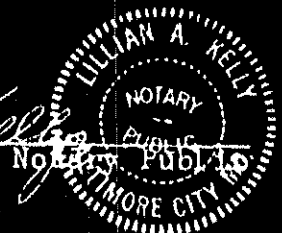
Elsie V. Sites (SEAL)
Elsie V. Sites

STATE OF MARYLAND, BALTIMORE CITY, TO WIT:

I HEREBY CERTIFY, that on this 31st day of December, 1958, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City aforesaid, personally appeared Albert W. Sites and Elsie V. Sites, his wife, and severally acknowledged the foregoing Deed to be their act.

AS WITNESS my hand and Notarial Seal:

Lillian A. Kelly
Lillian A. Kelly, Notary Public



Rec'd for record DEC 31 1958 AS 17.25

Per Walter J. Rasmussen, Clerk

Mailed to Elmer R. Hille

PETITIONER'S EXHIBIT 8



IN RE: PETITION FOR SPECIAL HEARING BEFORE THE
W/S West Liberty Road, 338' NE
of the c/l of Harris Mill Road * DEPUTY ZONING COMMISSIONER
(21304 and 21308 W. Liberty Road) * OF BALTIMORE COUNTY
7th Election District * Case No. 93-289-SPH
3rd Councilmanic District *
Richard W. Henning, et al
Petitioners *

RECEIVED
MAY 28 1993

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ZADM

This matter comes before the Deputy Zoning Commissioner as a Petition for Special Hearing filed by the owners of the subject property, Richard W. Henning and his son, David W. Henning. The Petition, as filed, requests approval to subdivide R.C. 4 zoned land with a gross area of less than 6 acres, into more than two parcels and to create two non-density parcels of less than 1 acre each in an R.C. 2 zone, as more particularly described on Petitioner's Exhibit 1.

Appearing on behalf of the Petition were Richard Walter Henning, one of the property owners, and Robert R. Wilson, Registered Land Surveyor. Dorothy D. Cromwell appeared and testified as a Protestant.

Testimony indicated that the subject property, known as 21308 West Liberty Road, consists of 10.78 acres, more or less, split zoned R.C. 4 and R.C. 2, and is improved with a single family dwelling, two accessory sheds, and a graveyard. All existing improvements are located on the R.C. 2 zoned portion of the site which consists of approximately 5.73 acres, more or less. The R.C. 4 zoned portion of the site contains approximately 5.05 acres, more or less, and is unimproved. The Petitioners purchased the subject property in 1990 at which time, David Henning moved into the dwelling thereon. The Petitioners rented the surrounding acreage to a farmer for agricultural purposes, but ceased the farming operation earlier

MICROFILMED

this year. The Petitioners are now desirous of subdividing the property to create four parcels consisting of three lots and a non-density parcel as more particularly described on Petitioner's Exhibit 1. Proposed Lot 1, which is zoned R.C. 2 in its entirety, would consist of 2.98 acres, more or less, and contain the existing improvements known as 21308 West Liberty Road. Proposed Lots 2 and 3 would consist of approximately 2.67 and 3.55 acres, respectively, and would be known as 21306-A and 21306 West Liberty Road. Each lot is proposed for development with a single family dwelling. Due to the irregular lot line which traverses proposed Lots 2 and 3, both lots will be split zoned R.C. 2 and R.C. 4. The R.C. 2 zoned portion of Lot 2 would contain 1.88 acres and all of the proposed improvements thereon. The R.C. 4 zoned portion of Lot 2, which would contain 0.79 acres, more or less, would be considered a non-density parcel of land for zoning purposes. That is, this 0.79 acre non-density parcel will have no improvements placed thereon and shall be used for agricultural purposes only. The R.C. 4 zoned portion of Lot 3, consisting of approximately 3.24 acres, more or less, will contain all of the proposed improvements thereon. The remaining .31 acres, zoned R.C. 2, will remain as non-density acreage, but for a small portion located in the northeast corner of said lot, consisting of approximately 0.13 acres, more or less, which is proposed to be used to provide a panhandle driveway for Lot 3. The fourth parcel, identified as Parcel A on Petitioner's Exhibit 1, would contain approximately 1.47 acres and the old graveyard. This 1.47 acre parcel is proposed to be conveyed as a non-density transfer to Mr. & Mrs. Norman W. Anderson, Jr., who reside immediately adjacent to the subject property at 21304 West Liberty Road. Testimony indicated that the Andersons have no rear yard and merely wish to acquire this land to provide additional space

to the rear of their property. It was made clear that the transfer of proposed Parcel A to the Andersons would be for non-density purposes.

Appearing and testifying out of concern over the proposed subdivision was Dorothy Cromwell. Ms. Cromwell resides across from the subject site on Harris Mill Road. Ms. Cromwell testified that there currently exists a water runoff and flooding problem from streams in the area. She is concerned that the proposed subdivision for development of two additional dwellings might exacerbate the water runoff problem she currently experiences.

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship would result if the relief requested in the special hearing were not granted. It has been established that the requirements from which the Petitioner seeks relief would unduly restrict the use of the land due to the special conditions unique to this particular parcel. Further, I could not find that the proposed improvements would significantly add to the current water runoff problem in the area or adversely affect the public health, safety, or general welfare of the surrounding community.

Therefore, the proposed subdivision of the subject property as set forth on Petitioner's Exhibit 1 shall be approved in accordance with the following: There shall be no further subdivision of new Lot 1, which shall consist of 2.98 acres and the existing dwelling, known as 21308 West Liberty Road. A new deed for proposed Lot 1 shall be recorded in the Land Records of Baltimore County which references this case and the terms and conditions contained herein. Proposed Lot 2, which shall contain 2.67 acres, split zoned R.C. 2 and R.C. 4, shall enjoy one density unit for purposes of developing the property with a single family dwelling on the

R.C. 2 zoned portion of the site. The R.C. 4 zoned portion of Lot 2, which consists of approximately 0.79 acres, more or less, shall be used for non-density purposes only. There shall be no improvements located on this portion of the site. In addition, there shall be no further subdivision of Lot 2 and a new deed for Lot 2 which references this case and the terms and conditions contained herein shall be recorded in the Land Records of Baltimore County. Proposed Lot 3, which consists of 3.24 acres zoned R.C. 4 and 0.31 acres zoned R.C. 4, shall also enjoy one density unit for purposes of developing the property with a single family dwelling on the R.C. 4 zoned portion of the site. The R.C. 2 zoned land will be used for non-density purposes, but for a small portion located in the northeast corner of said lot containing approximately 0.13 acres which is proposed to be used to provide panhandle driveway access to Lot 3. This 0.13 acres of R.C. 2 zoned land shall be used to provide the subject panhandle driveway only and shall not be used to calculate density in any manner. There shall be no further subdivision of Lot 3 and a new deed for Lot 3 which references this case and the terms and conditions contained herein shall be recorded in the Land Records of Baltimore County. Finally, proposed Parcel A, which contains approximately 1.03 acres zoned R.C. 4 and 0.44 acres zoned R.C. 2, shall be transferred to the Andersons for non-density purposes. As previously stated, the Andersons are desirous of acquiring Parcel A to provide additional land to the rear of their property. There shall be no further subdivision of this lot and the Petitioners shall record a new deed for Parcel A in the Land Records of Baltimore County which references this case and the terms and conditions set forth herein.

Notwithstanding the relief granted above, the following terms and conditions must be met as to the old graveyard on Parcel A. The Andersons shall at all times permit access to the graveyard for visitation purposes by those individuals who have friends or relatives buried on the site. Further, the Andersons shall be required to maintain the grounds within the subject graveyard in good condition. The Petitioners shall file a revised site plan with a note contained thereon which clearly states that neither the Andersons, their heirs, successors or assigns, shall restrict access to this graveyard for legitimate purposes. Furthermore, the deed transferring this non-density parcel to the Andersons shall specifically reference the fact that the Andersons, their heirs, successors, or assigns must at all times permit access to the subject graveyard.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the special hearing should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 25th day of May, 1993 that the Petition for Special Hearing to approve a subdivision of the subject property, split zoned R.C. 2 and R.C. 4 and with a gross area of less than 6 acres, into four parcels and to create two parcels of less than 1 acre each in an R.C. 2 zone for non-density purposes, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

- 1) The Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.

- 2) The Petitioners shall submit a revised site plan incorporating the terms and conditions of the relief

granted herein, including a note thereon which clearly states that the Andersons, their heirs, successors or assigns, shall at no time restrict access to the graveyard on Parcel A for legitimate visitation purposes. The Petitioners(shall also show on the revised plan the appropriate setbacks in the R.C. 4* zoned portions of proposed Lots 2 and 3, pursuant to Section 1A03.4B2 of the B.C.Z.R. It should be noted that the setback requirements for R.C. 4 zoned land have changed and the site plan must be revised accordingly.

3) The Petitioners shall have sixty (60) days from the date of this Order to prepare and record the four new deeds describing Lots 1, 2, 3 and Parcel A as required by this Order. A copy of the recorded deeds shall be submitted to the Zoning Administration Office for inclusion in the case file, prior to the issuance of any building permits.

4) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.



TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

ARTICLE 1A--RESOURCE-CONSERVATION ZONES¹ [Bill No. 98, 1975.]

Section 1A00--GENERAL PROVISIONS: ALL R.C. CLASSIFICATIONS
[Bill No. 98, 1975.]

→ 1A00.1--Findings. It is found:

- a. that development in the rural areas of Baltimore County has in recent years been taking place at an increasing rate; [Bill No. 98, 1975.]
- b. that this development has occurred without the framework of a land use plan or other planning components; [Bill No. 98, 1975.]
- c. that due to this and other factors, this development has formed very undesirable land use patterns; [Bill No. 98, 1975.]
- d. that in general, these patterns are, or can be described as, urban sprawl; [Bill No. 98-75.]
- e. that a significant amount of urban sprawl development is occurring as linear development along the various highways of the rural areas of the County as tracts of land immediately fronting along highways are "lotted off"; the utility of the road system is being impaired and future improvements will be frustrated if this process continues; [Bill No. 98, 1975.]
- f. that it has been established that this development carries with it an extremely high cost to the County in a number of respects including: [Bill No. 98, 1975.]
 1. the cost of servicing this pattern of development; [Bill No. 98, 1975.]
 2. the cost with respect to its consumption and use of prime agricultural land, critical watershed areas, mineral extractive sites, as well as of other important natural resource areas; [Bill No. 98, 1975.]
 3. the cost of future development opportunities due to the fact that viable, rational² alternatives will be lost totally or comprised² significantly by the present form of development; [Bill No. 98, 1975.]

MICROFILMED

- g. that the aspect of the comprehensive plan that is applicable and which is being considered for rural Baltimore County embodies solutions to the various problems; and [Bill No. 98, 1975.]
- h. that the effective implementation of this plan requires additional zoning classifications. [Bill No. 98, 1975.]
- i. that effective implementation of the resource conservation area requirements in the Chesapeake Bay Critical Area Criteria requires additional resource conservation zoning classifications to accommodate strictly controlled growth while conserving habitat and water quality within the critical area. [Bill No. 32, 1988.]

1A00.2--Purposes. Pursuant to the above findings it is the purpose of the Resource Conservation zones to: [Bill No. 98, 1975.]

- a. discourage present land use patterns of development and to create a framework for planned or orderly development; [Bill No. 98, 1975.]
- b. provide sufficient and adequate areas for rural-suburban and related development in selected and suitable areas; [Bill No. 98, 1975.]
- c. protect both natural and man-made resources from compromising effects of specific forms and densities of development; [Bill No. 98, 1975.]
- d. protect areas desirable for more intensive future development by regulating undesirable forms of development within these areas until such time as intensive development commences. [Bill No. 98, 1975.]
- e. help achieve the goals of the Chesapeake Bay Critical Area Law by enacting land use policies to control development within the critical area by conserving the land and water resource base for agriculture, forestry and other natural resource uses; minimizing adverse effects on water quality; and conserving fish, wildlife and plant habitat. [Bill No. 32, 1988.]

5. Density application. In keeping with the purpose of this classification, the density as designated shall apply to any development approved under this subsection. The residual land shall not be further developed until public utilities are extended and higher densities are applied. [Bill No. 98, 1975.]
6. Exceptions for certain record lots. Any existing lot or parcel of land with boundaries duly recorded among the land records of Baltimore County with the approval of the Baltimore County Office of Planning and Zoning on or before the effective date of these regulations and not part of an approved subdivision that cannot meet the minimum standards as provided within the zone may be approved for residential development in accordance with the standards prescribed and in force at the time of the lot recordation. [Bill No. 98, 1975.]
7. Dwellings per lot. No more than one dwelling is permitted on any lot in an R.C. 3 zone, but not excluding additional dwellings for bona fide tenant farmers. [Bill No. 98, 1975.]

1A02.4--Maryland Agricultural Land Preservation Program.
[Bill No. 98, 1979.]

The use or development of land in an agricultural district established in accordance with Section 2-509 of the Agricultural article of the Annotated Code of Maryland, 1974, 1979 Cumulative Supplement, shall be governed by agricultural land preservation provisions enacted by the county council pursuant to Section 2-513 of that article in the case of any conflict between those provisions and these regulations. [Bill No. 178, 1979.]

Section 1A03--R.C. 4 (WATERSHED PROTECTION) ZONES [Bill No. 98, 1975;
No 178, 1979.]



1A03.1--Findings and Legislative Policy. [Bill No. 98, 1975;
178, 1979.]

The county council finds that major, high-quality sources of water supply for the entire Baltimore metropolitan area and for other neighboring jurisdictions lie within Baltimore County and that

continuing development in the critical watersheds of those water-supply sources is causing increased pollution and sedimentation in the impoundments, resulting in increasing water-treatment costs and decreasing water-storage capacity. The R.C. 4 zoning classification and its regulations are established to provide for the protection of the water supplies of metropolitan Baltimore and neighboring jurisdictions by preventing contamination through unsuitable types or levels of development in their watersheds. [Bill No. 98, 1975; No. 178, 1979.]

1A03.2--Rezoning by petition. [Bill No. 98, 1975; No. 178, 1979.]

No petition for reclassification of property in an R.C. 4 zone may be granted unless a registered professional engineer, architect, landscape architect, or land surveyor first certifies: [Bill No. 98, 1975; No. 178, 1979.]

1. that the parcel of land under petition lies at least 200 feet from the property line of any public water reservoir; [Bill No. 178, 1979.]
2. that the parcel lies at least 300 feet from any 1st - or 2nd order or greater stream that flows directly into a public water reservoir; [Bill No. 178, 1979.]
3. that the parcel lies at least 300 feet from any 3rd - order or greater stream that flows directly or indirectly into a public water reservoir; [Bill No. 178, 1979.]
4. that no more than 30% of the parcel has a slope of more than 20%; [Bill No. 178, 1979.]
5. that the parcel does not lie within a 100-year floodplain; and [Bill No. 178, 1979.]
6. that, as shown by an environmental impact statement, the manner in which proposed reclassification will affect water quality in the watershed or any public water reservoir. [Bill No. 178, 1979.]

For the purpose of this subsection, streams are classified by order as shown on the map of stream orders adopted by the Planning Board on March 25, 1976. [Bill No. 178, 1979.]

R. 10 ZONE

per cent of the lots may have an area less than 10,000 square feet (see Section 304).

208.2—Front Yard—For dwellings, the front building line shall be not less than 30 feet from the front lot line and not less than 55 feet from the center line of the street, except as specified in Section 303.1; for other principal buildings—50 feet from the front lot line and not less than 75 feet from the center line of the street, except as specified in Section 303.1.

208.3—Side Yards—For dwellings, 10 feet wide for one side yard and not less than 25 feet for the sum of both, except that for a corner lot the building line along the side street shall be not less than 30 feet from the side lot line and not less than 55 feet from the center line of the street; for other principal buildings—20 feet wide, except that for a corner lot the building line along the side street shall be not less than 35 feet from the side lot line and not less than 60 feet from the center line of the street.

208.4—Rear Yard—30 feet deep.

R. 6 Zone—Residence, One and Two-Family

Section 209—USE REGULATIONS

The following uses only are permitted:

209.1—Uses permitted and as limited in R. 40 Zone;

209.2—Two family dwellings, as defined in Section 101;

209.3—Special Exceptions—Same as R. 10 Zone, except sanitary landfills and trailer parks which are not permitted (see Sections 270 and 502).

Section 210—HEIGHT REGULATIONS:

Same as R. 40 Zone.

Section 211—AREA REGULATIONS

Minimum requirements, except as provided in ARTICLE 3, shall be as follows:

211.1—Lot Area and Width—Each one-family dwelling and each other principal non-residential building hereafter erected shall be located on a lot having an area of not less than 6,000 square feet and a width at the front building line of not less than 55 feet; each two-family dwelling hereafter erected shall be located on a lot(s) having an area of not less than

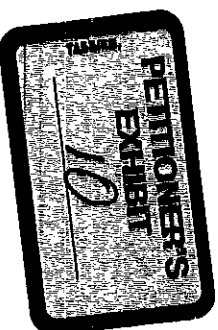
R. 6 ZONE

10,000 square feet and a width at the front building line of not less than 80 feet for a duplex dwelling and 90 feet for the pair of lots occupied by a semi-detached dwelling (see Section 304).

211.2—Front Yard—For dwellings, the front building line shall be not less than 25 feet from the front lot line and not less than 50 feet from the center line of the street, except as specified in Section 303.1; for other principal buildings—40 feet from the front lot line and not less than 65 feet from the center line of the street, except as specified in Section 303.1.

211.3—Side Yards—For one-family dwellings, 8 feet wide for one side yard and not less than 20 feet for the sum of both, except that for a corner lot the building line along the side street shall be not less than 25 feet from the side lot line and not less than 50 feet from the center line of the side street; for two-family dwellings, side yards shall be as provided in Sections 214.1 and 214.3; for other principal buildings, same as in Section 208.3.

211.4—Rear Yard—30 feet deep.



B. L. ZONE

Section 232—AREA REGULATIONS

Minimum requirements, except as provided in ARTICLE 3, shall be as follows:

232.1—Front Yard—For residences, as in Sections 302 and 303.1; for commercial buildings the front building line shall be not less than 10 feet from the front property line and not less than 40 feet from the center line of the street, except as specified in Section 303.2.

232.2—Side Yards—

- a. For residences, as in Section 302;
- b. For commercial buildings, none required on interior lots, except that where the lot abuts a lot in a residence zone there must be a side yard not less than the greater minimum width required for a dwelling on the abutting lot and on corner lots the side yard on the street side shall be not less than 10 feet in width.

232.3—Rear Yard—

- a. For residences, as in Section 302;
- b. For commercial buildings, none required except that where the rear lot line abuts on a residence zone there shall be a rear yard not less than 20 feet deep.

232.4 — Parking Area and Loading Space — In accordance with the provisions of Section 409.

B. M. Zone—Business, Major

Section 233—USE REGULATIONS

The following uses only are permitted (see Section 233.3):

233.1—Uses permitted in B. L. Zone.

233.2 — Animal hospital, when 100 feet from a residential zone;

Automobile sales room and adjoining outdoor sales area, provided that dismantled or junked cars unfit for operations on the highways shall not be stored outdoors;
Billiard and pool rooms;
Bowling alleys;
Carpentry, electrical, plumbing, heating, sheetmetal, electroplating and painting shops;

ARTICLE 3—EXCEPTIONS TO HEIGHT AND AREA REQUIREMENTS

Section 300—HEIGHT EXCEPTIONS

300.1—The height limitations of these regulations shall not apply to barns and silos, nor to church spires, belfries, cupolas, domes, radio or television aerials, drive-in theatre screens, observation, transmission or radio towers, or poles, flagstaffs, chimneys, parapet walls which extend not more than four feet above the limiting height, bulkheads, water tanks and towers, elevator shafts, penthouses and similar structures provided that any such structures shall not have a horizontal area greater than 25 per cent of the roof area of the building.

300.2—Buildings for religious or educational purposes may be built to a height of 50 feet in any zone in which they are permitted.

Section 301—PROJECTIONS INTO YARDS

301.1—If attached to the main building, a carport or a one-story open porch, with or without a roof, may extend into any required yard not more than 25% of the minimum required depth of a front or rear yard or of the minimum required width of a side yard.

301.2—Projections such as bay windows, chimneys, entrances, vestibules, balconies, eaves and leaders may extend into any required yard not more than 4 feet provided that such projections (excepting eaves) are not over 10 feet in length.

301.3—No side and/or rear yard is required for a business or manufacturing use in that portion of any property located in a B. R., M. R., M. L., or M. H. Zone if such side and/or rear line abuts on a railroad right-of-way or siding, to either of which it uses rail access.

Section 302—HEIGHT AND AREA REQUIREMENTS FOR NEW RESIDENCES IN BUSINESS AND MANUFACTURING ZONES

Residences hereafter erected in business and manufacturing zones shall be governed by all height and area regulations for the predominant residence zone which immediately adjoins, or by R. 6 zone requirements, if no residence zone immediately adjoins.

Section 303—FRONT YARD DEPTHS IN RESIDENCE AND BUSINESS ZONES

303.1—In R. 20, R. 10, and R. 6 Zones the front yard depth of any building or other structure hereafter erected shall be the average of the front yard depths of the lots immediately adjoining on each side provided such adjoining lots are improved with principal buildings situate within 200 feet of the joint side property line, but where said immediately adjoining lots are not both so improved, then the depth of the front yard of any building hereafter erected shall be not less than the average depth of the front yards of all improved lots within 200 feet on each side thereof, provided that no dwelling shall be required to be set back more than 60 feet in R. 20 Zones, 50 feet in R. 10 Zones and 40 feet in R. 6 Zones. In no case, however, shall nonresidential principal buildings have front yards of less depth than those specified therefrom in the area regulations for R. 20, R. 10, and R. 6 zones, respectively.

303.2—In B. L., B. M. and B. R. Zones the front yard depth of any building or other structure hereafter erected shall be the average of the front yard depths of the lots immediately adjoining on each side provided such adjoining lots are improved with permanent commercial buildings constructed of fire-resisting materials situate within 100 feet of the joint side property line, but where said immediately adjoining lots are not both so improved, then the depth of the front yard of any building hereafter erected shall be not less than the average depth of the front yards of all lots within 100 feet on each side thereof which are improved as described above.

Pelt X#11

BALTIMORE COUNTY, MARYLAND
I N T E R O F F I C E C O R R E S P O N D E N C E

TO: Arnold Jablon, Director DATE: Feb. 13, 1995
Zoning Administration and Development Management

FROM: *Pub* Robert W. Bowling, P.E., Chief
Developers Engineering Section

RE: Zoning Advisory Committee Meeting
for February 13, 1995
Item No. 255

The Developers Engineering Section has reviewed the subject zoning item. West Liberty Road is an existing road, which shall ultimately be improved as a 40-foot street cross-section on a 60-foot right-of-way.

Harris Mill Road is an existing road, which shall ultimately be improved as a 40-foot street cross-section on a 60-foot right-of-way.

In accordance with Bill No. 56-82, filling within a flood plain is prohibited.

Per Topo Sheet NE 38B, dated April 1961, there is an existing building on this lot. Please clarify.

RWB:sw

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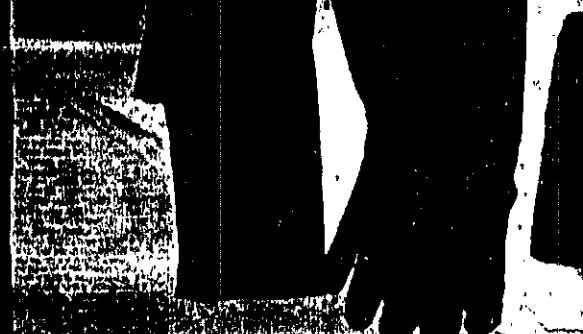
MACAZINE

BALTIMORE, MD.

METROGRAVURE

February

Pett
#12



Country Store

James Winemiller, Clarence Grove and Milton Winemiller chat in front of the country store at Gorsuch Mills, Md. Sunstory in P

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Gorsuch Mills is on the West Liberty road, in the northeast corner of Baltimore county, about a mile and a half from the Pe



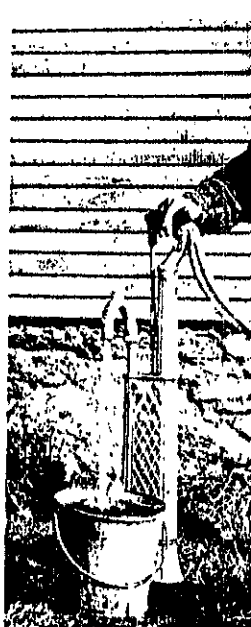
on Winemiller, the country storekeeper, lights the oil
ps which are still his establishment's only illumination.



Ax handles, cow chains, animal traps, boots, brooms, funne
polish and patent medicines are among the varied wares off



Haberdashery collects dust. The papers
are bills—some 30 years uncollectible.



James Winemiller
brother, fills a b



Vinemiller is 75, and has been feeling it, he says, last fall, when he was beaten and robbed.



After going through country school, Milt bought out a small store at Gorsuch, then in 1907 built this one. His store flourished until the auto changed

Why are so many smokers switching to king-size Cavaliers?

CAVALIERS ARE Milder

SAY 8 OUT OF 10 SMOKERS IN GROUP AFTER GROUP



of the Air Force personnel interviewed at San Antonio, Texas, said Cavaliers are milder!



83% of the guests interviewed at the Racquet Club, Palm Springs, California, said Cavaliers are milder!



King-size Cavaliers are a special, different blend



made by the makers of Camels.

Compare Cavaliers with any brand! When thousands of smokers in group after group from coast to coast compared king-size Cavalier cigarettes with the brand they had been smoking . . . 80% or more of those interviewed said Cavaliers are Milder!

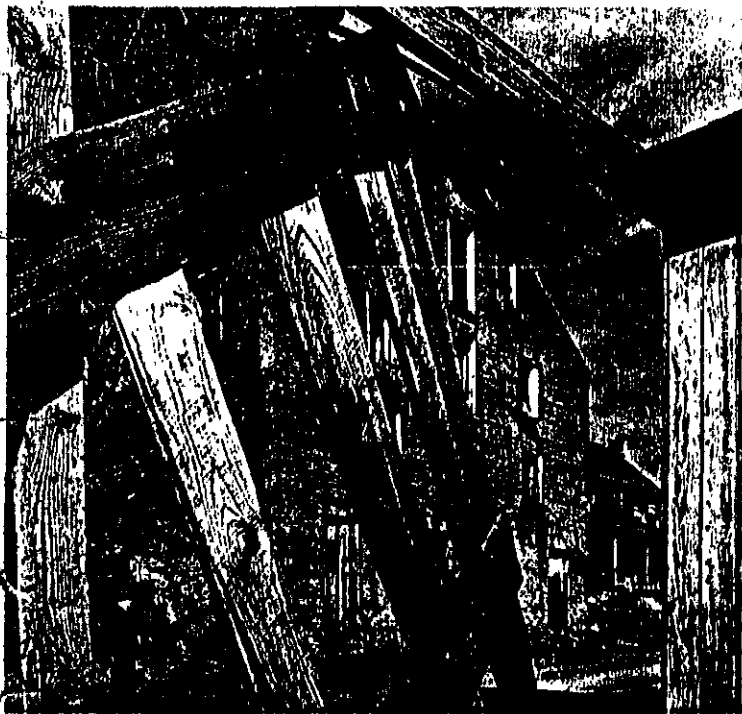
• Truly Mild . . . and along with Cavalier's mildness goes fresh, taste-awakening flavor . . . a new experience in smoking pleasure you shouldn't miss! Try king-size Cavalier cigarettes now. See if you don't agree that Cavaliers are milder . . . that Cavaliers taste wonderful! Remember . . . group after group of smokers compared Cavaliers with all the other leading brands — perhaps the brand you now smoke — and at least 8 out of 10 said Cavaliers are milder! Try king-size Cavaliers yourself! They're priced no higher than other standard brands. Buy a carton!



CAVALIERS Milder? HERE'S HOW YOU

8 OUT OF 10 WHO TRIED THEM SAY

Storekeeper



Above, the abandoned grist mill, seen through a dilapidated fence. Bottom of page, the counter of the store.

Continued from Page 10

church and the Gorsuch graveyard up on the hill, where now only one stone, dated 1842, still stands.

And then business began falling off. And time has been doing the rest. . . .

"Oh, some of the old people buy here yet," says Jim. "The Jennings and Heaps families—they live in the two houses Milt owns here—come around, and Mrs. Jennings cooks Milt's meals for him. Sometimes strangers stop, county road people and truck drivers and hunters. Milt makes out, I reckon."

But reminders of the good years remain.

These are not just the collars and cuffs piled up in a box on the top floor—or the old candy jars with cut-glass tops, now black with dust. Or the bots of harness, the masks that prevented horses from eating, the fancy metal rack that held smart buggy whips which young fellows cracked sharply to impress the world.

RATHER, the reminders are the quiet of the store as the old men sit around the stove, and the clock—the clock that the harness oil salesman gave Milt back in 1907 when he opened

up—ticks on the wall. Or the old smell, the blend of a lifetime of store smells.

Or the view of the hills and the roads from the front porch.

On any fine day, that's where you'll find Milt. Maybe he'll watch Bobby Jennings and his ridiculous little dog play around the empty, soft-drink cases. Maybe he'll return the waves of farmers who, passing by, make a point of smiling his way—and then, maybe he'll watch the back end of an aging, gadget-festooned convertible, driven by a sallow young man with sideburns and a girl friend, roar toward Stewartstown.

JIM and Milt sit on the porch together, and almost any day they can look up the West Liberty road and see a horse and rider walking along slowly while a red dog runs ahead and circles back.

"They's Chauncey," says Milt after awhile. And soon a farmer with a gentle, lined face comes up, dismounts, ties the horse to the old church door, walks up on the porch, sits down and takes a chew of tobacco. Then the old men talk about the price of milk, or the world—which seems very far away.

Doctors Now Recommend Special Formula for CONSTIPATION AFTER 35!

In a recent survey, 8 out of 10 doctors recommended the Serutan principle for constipation relief after 35. Serutan is particularly effective for middle-age irregularity because it is highly concentrated vegetable hydrogel, the laxative ingredient nature put in fruits and vegetables to help your system function regularly. Just 2 teaspoonfuls bring you the same effective laxative benefits as 7 apples or 11 big peaches. Doctors recommend Serutan for daily regularity. Get it today at your drugstore.

SAVE OVER 16% Buy Economy Size!

SERUTAN
"EAT IT BACKWARDS"



Feel Stronger Fast!

High Potency Blood-Builder Brings New Strength and Energy

If you feel tired all the time, it may be due to iron-poor, tired blood*. So use Geritol, the high potency blood-builder that begins to strengthen tired blood in only 24 hours—brings strength and energy to every part of your body. 2 tablespoons of Geritol contain twice the iron in a lb. of calves' liver! Also contains the anti-anemia red Vitamin B₁₂. *Feel stronger fast!* Use Geritol in liquid or tablet form. At your drugstore. Money-back guarantee. Save money! Buy the Economy Size! *Due to iron deficiency



GERITOL

Mary's DULL

PERIODIC PAIN

Menstrual pain had Mary down but Midol brought quick comfort. Midol acts three ways to bring faster relief from menstrual distress. It relieves cramps, eases headache and chases "blues."

Mary's SHARP

WITH

MIDOL



Sperti

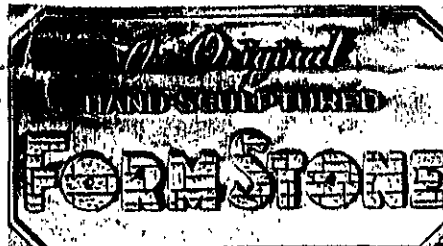
Does Both

ONLY \$14.95

at retail stores everywhere

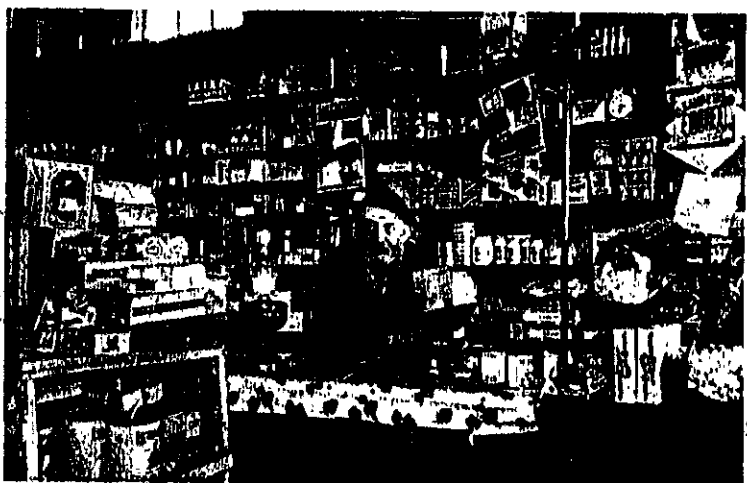


SPERTI FARADAY



Out

First cost is no lifetime! No FormStone's home truly out-insulating. No down. The 200



2200028

APPLICATION FOR PERMIT
BALTIMORE COUNTY MARYLAND
DEPARTMENT OF PERMITS & DEVELOPMENT MANAGEMENT
TOWSON, MARYLAND 21204

DATE: 12/24/98

OEA: JK
HISTORIC DISTRICT/BLDG.

PERMIT #: B
RECEIPT #: A
CONTROL #: NR
XREF #:

PROPERTY ADDRESS 21306 W. LIBERTY ROAD
SUITE/SPACE/FLOOR
SUBDIV: 100NE HARRIS MILL RD.
TAX ACCOUNT #:

☐ YES ☒ NO
☐ DO NOT KNOW

FEE: 149.00 + 15.00
PAID: 154.00
PAID BY: APP
INSPECTOR:

OWNER'S INFORMATION (LAST, FIRST)
NAME: TODD L. MORRILL
ADDR: 1248 Lower Glencoe Rd.,
Glencoe, MD. 21152

DOES THIS BLDG.
HAVE SPRINKLERS
YES ☐ NO ☐

I HAVE CAREFULLY READ THIS APPLICATION
AND KNOW THE SAME IS CORRECT AND TRUE,
AND THAT IN DOING THIS WORK ALL PROVI-
SIONS OF THE BALTIMORE COUNTY CODE AND
APPROPRIATE STATE REGULATIONS WILL BE
COMPLIED WITH WHETHER HEREIN SPECIFIED
OR NOT AND WILL REQUEST ALL REQUIRED
INSPECTIONS.

BUILDING 1 or 2 FAM.
CODE CODE ☒
BOCA CODE

- TYPE OF IMPROVEMENT
- ☒ NEW BLDG CONST
 - ☐ ADDITION
 - ☐ ALTERATION
 - ☐ REPAIR
 - ☐ WRECKING
 - ☐ MOVING
 - ☐ OTHER

TYPE OF USE

RESIDENTIAL

- ☒ ONE FAMILY
- ☐ TWO FAMILY
- ☐ THREE AND FOUR FAMILY
- ☐ FIVE OR MORE FAMILY
(ENTER NO UNITS)
- ☐ SWIMMING POOL
- ☐ GARAGE
- ☐ OTHER

TYPE FOUNDATION BASEMENT

- ☐ SLAB ☐ FULL
- ☐ BLOCK ☐ PARTIAL
- ☐ CONCRETE ☐ NONE

NON-RESIDENTIAL

- ☐ AMUSEMENT, RECREATION, PLACE OF ASSEMBLY
- ☐ CHURCH, OTHER RELIGIOUS BUILDING
- ☐ FENCE (LENGTH HEIGHT)
- ☐ INDUSTRIAL, STORAGE BUILDING
- ☐ PARKING GARAGE
- ☐ SERVICE STATION, REPAIR GARAGE
- ☐ HOSPITAL, INSTITUTIONAL, NURSING HOME
- ☐ OFFICE, BANK, PROFESSIONAL
- ☐ PUBLIC UTILITY
- ☐ SCHOOL, COLLEGE, OTHER EDUCATIONAL
- ☐ SIGN
- ☐ STORE MERCANTILE RESTAURANT
- ☐ SPECIFY TYPE
- ☐ SWIMMING POOL SPECIFY TYPE
- ☐ TANK, TOWER
- ☐ TRANSIENT HOTEL, MOTEL (NO. UNITS)
- ☐ OTHER

TYPE OF CONSTRUCTION

- ☐ MASONRY
- ☒ WOOD FRAME
- ☐ STRUCTURE STEEL
- ☐ REINF. CONCRETE

TYPE OF HEATING FUEL

- ☐ GAS
- ☐ OIL
- ☐ ELECTRICITY
- ☐ COAL

TYPE OF SEWAGE DISPOSAL

- ☐ PUBLIC SEWER ☐ EXISTS ☐ PROPOSED
- ☒ PRIVATE SYSTEM ☐ EXISTS ☐ PROPOSED
- ☐ SEPTIC ☐ EXISTS ☐ PROPOSED
- ☐ PRIVY ☐ EXISTS ☐ PROPOSED

CENTRAL AIR: 1. ☐ 2. ☐ 1. ☐ PUBLIC SYSTEM ☐ EXISTS ☐ PROPOSED
ESTIMATED COST: \$ 60,000.00 2. ☒ PRIVATE SYSTEM ☒ EXISTS ☐ PROPOSED

OF MATERIALS AND LABOR
PROPOSED USE: SED
EXISTING USE: VACANT

OWNERSHIP

- ☒ PRIVATELY OWNED
- ☐ PUBLICLY OWNED
- ☐ SALE
- ☐ RENTAL

RESIDENTIAL CATEGORY: 1. DETACHED 2. SEMI-DET. 3. GROUP 4. TOWNHSE 5. MIDRISE
#EFF: #1BED: 1 #2BED: 1 #3BED: 1 TOT BED: 3 TOT APTS/CONDOS: 1 6. HIRISE

1 FAMILY BEDROOMS
GARBAGE DISPOSAL 1 NO BATHROOMS 1 CLASS 04
POWDER ROOMS 0 KITCHENS 1 LIBER 1 FOLIO 1

BUILDING SIZE LOT SIZE AND SETBACKS
FLOOR 2191 SIZE 1.470
WIDTH 42 FRONT STREET
DEPTH 36.1 SIDE STREET
HEIGHT 35.6 FRONT SETBK 40'
STORIES 1 + basmt SIDE SETBK 58' / 200' +
LOT #'S SIDE STR SETBK
CORNER LOT REAR SETBK 75'
1. Y 2. N ZONING R.C. 2

APPROVAL SIGNATURES
BLD INSP :
BLD PLAN :
FIRE :
SEDI CTL :
ZONING : BR FINAL : 12/29/98
PUB SERV : Rm 111 BR OK TO FILE : 12/29/98
ENVRMNT :
PERMITS : Rm 123 - ADDRESS JRC : 12.29.98

PLEASE SIGN & DATE

MAKE CHECKS PAYABLE TO BALTIMORE COUNTY MARYLAND -- NO PERMIT FEES REFUNDED

Deed as to when lot was created. - 12/30/98
- Deed showing + A.S.
- 1.470 AC
- 1.470 AC
- 1.470 AC

NO EXAMINATION OF TITLE
NO CONSIDERATION
NO TRANSFER OF TITLE

COPY

Property Tax Account No. 16-060055

RESIDENTIAL DEVELOPMENT RESTRICTION

THIS RESIDENTIAL DEVELOPMENT RESTRICTION (this "Restriction") is made this 4TH day of January 1999, by TODD MORRILL ("Owner").

WHEREAS, by virtue of a deed dated September 9, 1994, from Sally Price Michael, as the same is recorded among the Land Records of Baltimore County in Liber 10801, folio 223, the within named Owner acquired fee simple title to approximately 0.494 acres of ground binding on a portion of West Liberty Road and being presently known and identified on the State Department of Assessments and Taxation Map No. 8 for Baltimore County, Maryland as Parcel No. 1 within Grid No. 3 (the "Property"); and

WHEREAS, the Owner has acquired additional acreage adjacent to the Property (the "Adjacent Acreage") which, together with the Property has been subject to several zoning hearings and which were collectively rezoned during the 1996 Baltimore County Comprehensive Zoning Process; and

WHEREAS, as a condition of County approval for the construction of a single home on the Adjacent Acreage, it is necessary for the Owner to restrict in perpetuity the Property from further residential development.

NOW THEREFORE, in consideration of the above-described recitals which are incorporated herein by reference and other good and valuable considerations, the above-identified Owner intends

to restrict the development of the Property in perpetuity as follows:

The Property identified as Parcel No. 1 within Grid No. 3 of the State Department of Assessments and Taxation Map for Baltimore County No. 8, is hereby restricted in perpetuity from being developed with a single-family residence located thereon.

The Owner intends that this restriction on development of the Property shall be a covenant binding on and running with the Property and that the same shall be binding on the Owner and the Owner's personal representatives, heirs, successors and assigns.

Notwithstanding any restriction hereof to the contrary, the Owner and/or his personal representatives, heirs, successors and assigns shall not be prohibited from using the Property in conjunction with the Adjacent Acreage which is to be improved with a single-family dwelling, so long as no portion of the single-family dwelling is located on the Property.

IN WITNESS WHEREOF, the above-named Owner has affixed his hand and seal the date and year first above-written.

WITNESS:

Bernadette L. Sebour

OWNER:

Todd Morrill (SEAL)
Todd Morrill

STATE OF MARYLAND, Baltimore COUNTY, TO WIT:

I HEREBY CERTIFY that on this 5th day of January, 1999, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Todd Morrill, who represented himself to be the Owner named herein and that he affixed his hand and seal hereto the date and year first above written for the purposes herein contained.

AS WITNESS my Hand and Notarial Seal.

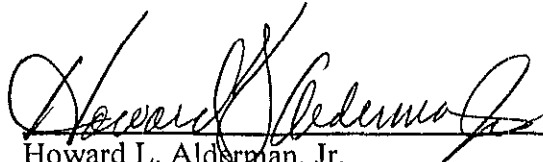
Bernadette L. Sebour
Notary Public

My Commission expires:

October 1, 2002

ATTORNEY'S CERTIFICATION

I HEREBY CERTIFY that the above instrument was prepared by me, an attorney admitted to practice before the Court of Appeals of Maryland, or under my supervision.


Howard L. Alderman, Jr.

AFTER RECORDATION, PLEASE RETURN TO:

Howard L. Alderman, Jr., Esquire
Levin & Gann, P.A.
305 W. Chesapeake Avenue
Suite 113
Towson, Maryland 21204

(410) 321-0600
Fax: (410) 296-2801

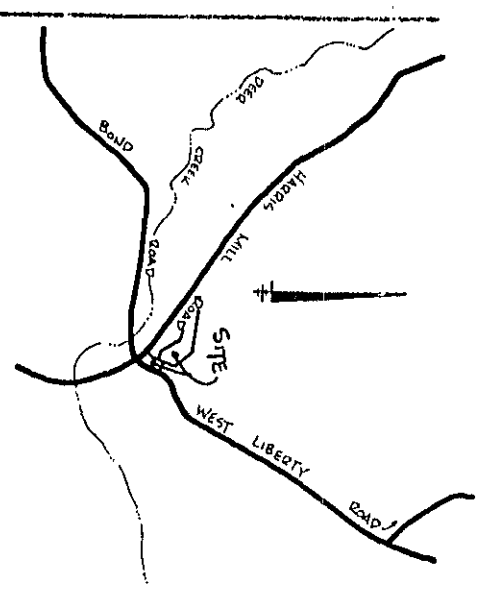
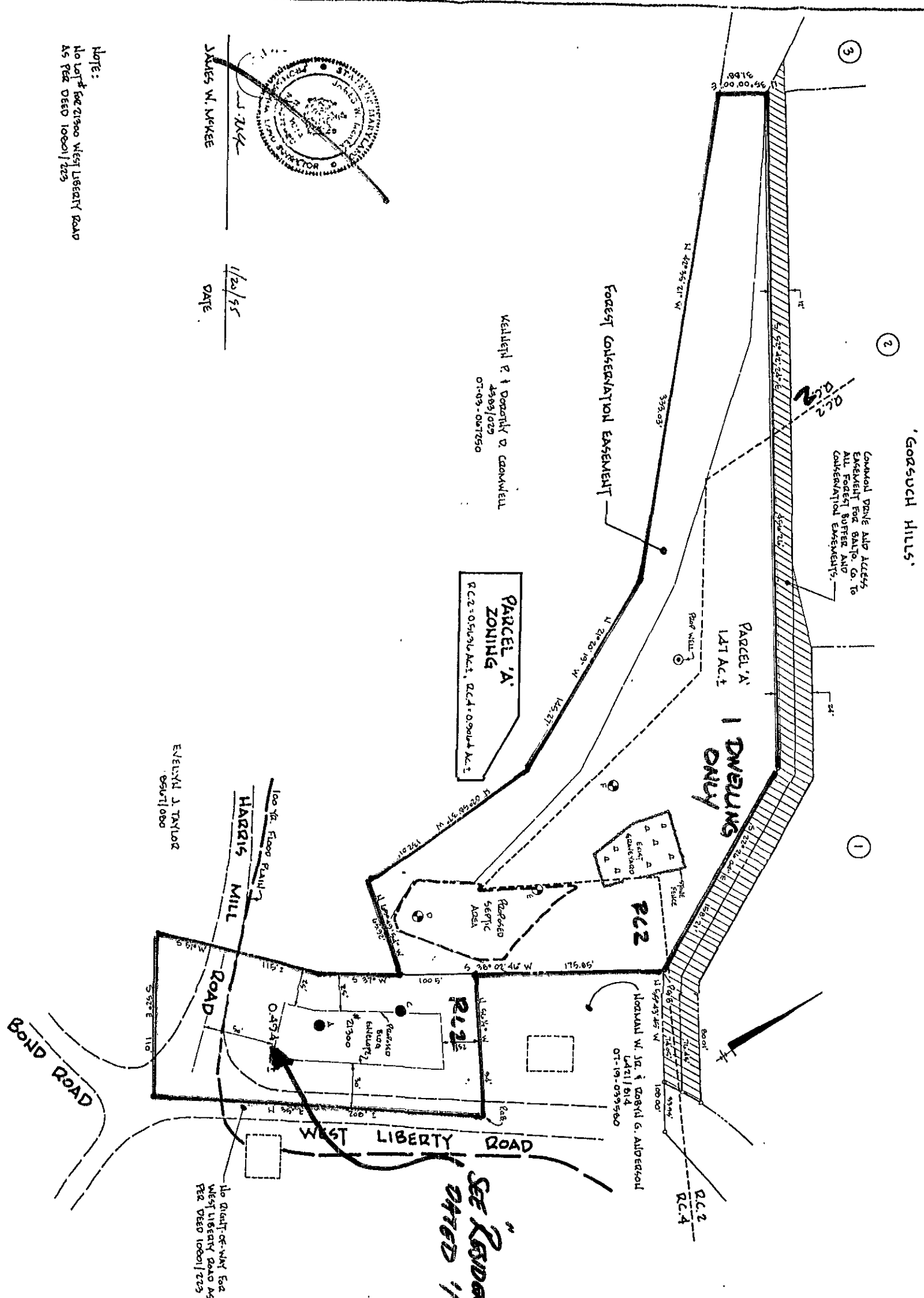
CASE NOS. 95-263-SPH
95-264-SPH and 95-265-A
TODD MORRILL - PETITIONER

NW/s W. Liberty Road, 208 ft. E of c/l
Harris Mill Road (21300 W. Liberty Road)

7th Election District

Appealed: 4/27/95

PLAT TO ACCOMPANY PETITION FOR ZONING ☒ VARIANCE & ☒ SPECIAL APPOINTMENT
 PROPERTY ADDRESS: 21300 WEST LIBERTY ROAD
 JURISDICTION NAME: GORDUCH HILLS 94-095-MP
 PLAT BOOK: - LOT - SECTION -
 OWNER: TODD MORGILL DEED: 10801/223



"See Landmark Development Restriction" dated 1/1/99 Referred in Deed to Land Records

LOCATION INFORMATION

CONTIGUOUS DISTRICT 3
 ELECTION DISTRICT 7
 1" = 200' SCALE MAP: DE 308
 Zoning: RC2 0.494 AC.1
 Lot size: Parcel 1.41 AC.1
 21,510 ± sq. ft.
 49,933 ± sq. ft.

ZONING OFFICE USE ONLY

REVIEWED BY: _____ ITEM # _____
 DATE: JANUARY 12, 1995

DATE: JANUARY 12, 1995
 REVIEWED BY: _____
 ITEM # _____

ATT #1

SPECIAL HEARING

VARIANCE

ACCOMPANY PETITION FOR ZONING

SEE PAGE 5 & 6 OF THE CHECKLIST AND ATTACHED MAP

PROPERTY ADDRESS: 21900 WEST LIBERTY ROAD
SUBDIVISION NAME: GORSUCH HILLS 94-095-MP
PLAT BOOK - 10001-223

OWNER: TODD MORRILL DEED: 10001/223

'GORSUCH HILLS'

COMMON DRIVE AND ACCESS
EASEMENT FOR BALTO. CO. TO
ALL FOREST BUFFER AND
CONSERVATION EASEMENTS.

PARCEL 'A'
1.47 AC.±

FOREST CONSERVATION EASEMENT

PARCEL 'A' ZONING
R.C.2 = 0.51076 AC.±, R.C.4 = 0.96024 AC.±

WILLIAM P. & DOROTHY D. COMWELL
4/5/85/0229
OT-03-007250



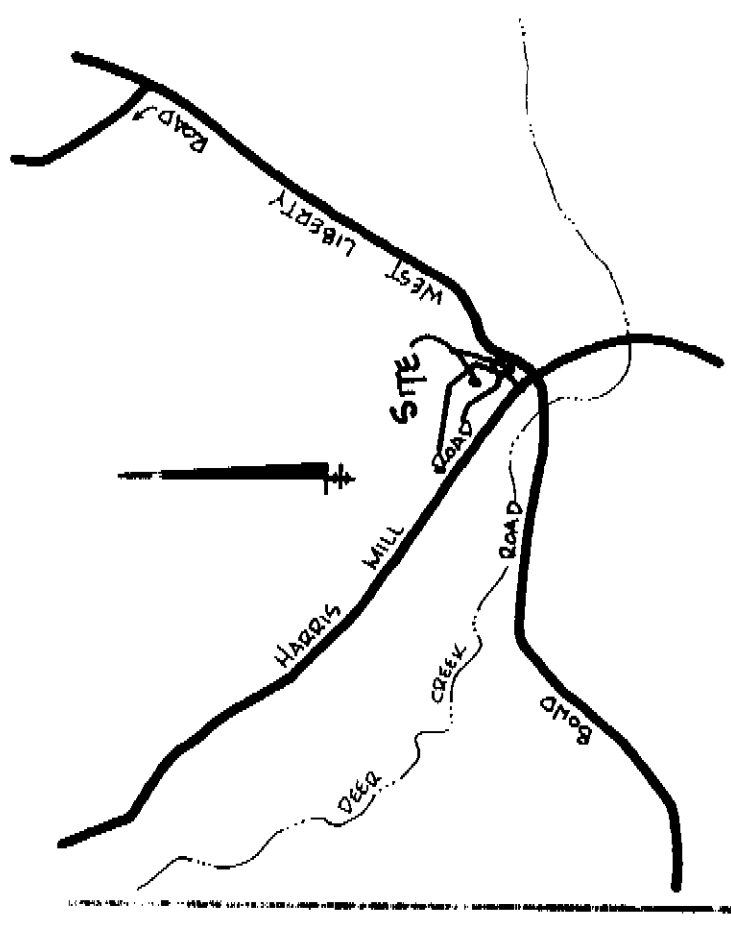
JAMES W. MCKEE
1/20/95
DATE

NOTE:
No Lot# for 21900 West Liberty Road
As Per Deed 10001/223

DATE: JANUARY 12, 1995
PREPARED BY: MCKEE & ASSOCIATES, INC.
5 SHAWAN ROAD HUNT VALLEY, MD 21090
(410) 527-1555

SCALE OF DRAWING: 1" = 50'

95-263-SPH
ITEM # 253



VICINITY MAP



LOCATION INFORMATION

COUNCILMANIC DISTRICT 3

ELECTION DISTRICT 7

1" = 200' SCALE MAP NE 308

ZONING R.C.2 & R.C.4

#21900 0.494 AC.±

LOT SIZE PARCEL A 1.47 AC.±

21,510 ±

64,093 ±

SEWER	<input checked="" type="checkbox"/>
WATER	<input checked="" type="checkbox"/>
CHESAPEAKE BAY CRITICAL AREA	<input checked="" type="checkbox"/>

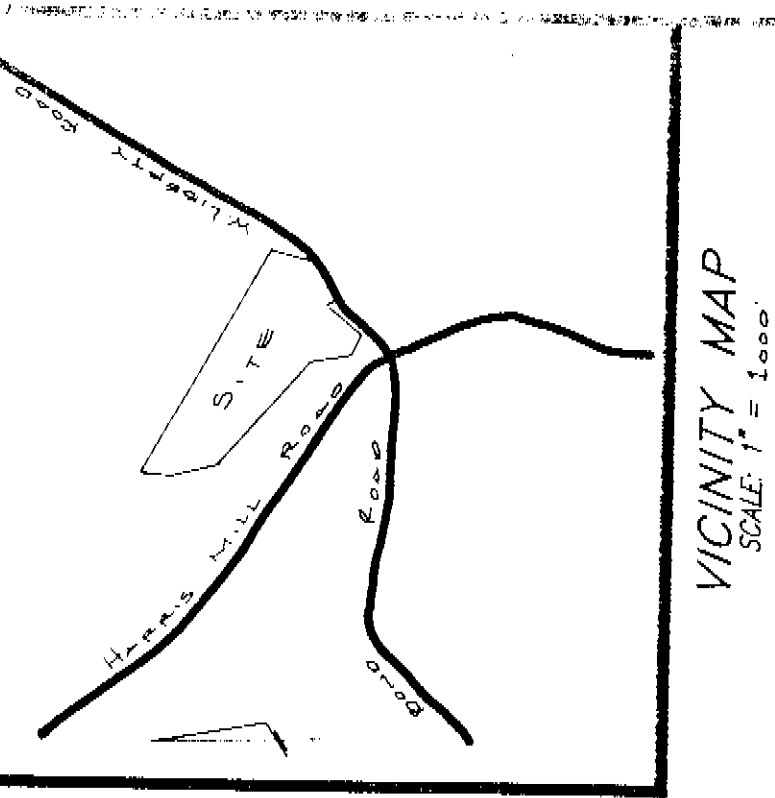
PREVIOUS ZONING HEARING YES
CASE # 93-209-SPH

ZONING OFFICE USE ONLY






DEFINED BY: ITEM #

PETITIONER'S EXHIBIT

MICROFILMED



LEGEND:

-  FOREST CONSERVATION EASEMENT (EXISTING FOREST)
-  10,000 SQ. FT. SEPTIC RESERVE AREA
-  PERC TEST
-  FOREST BUFFER
-  COMMON DRIVE EASEMENT AND/OR FOREST CONSERVATION EASEMENT

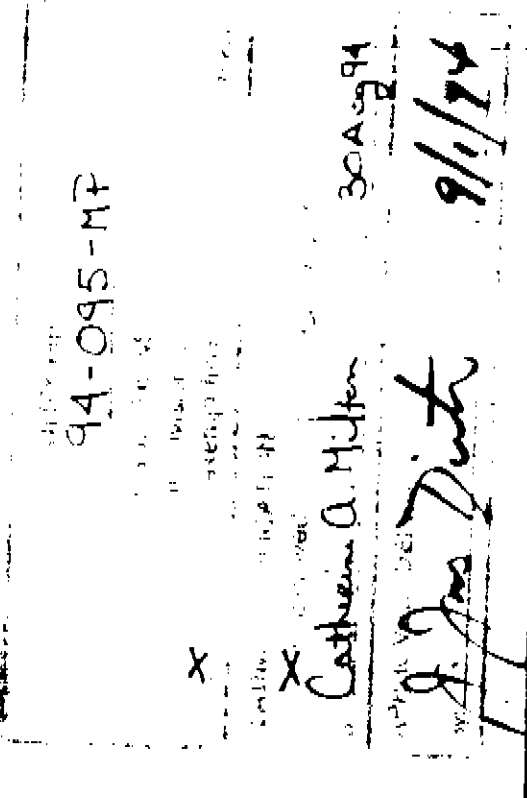
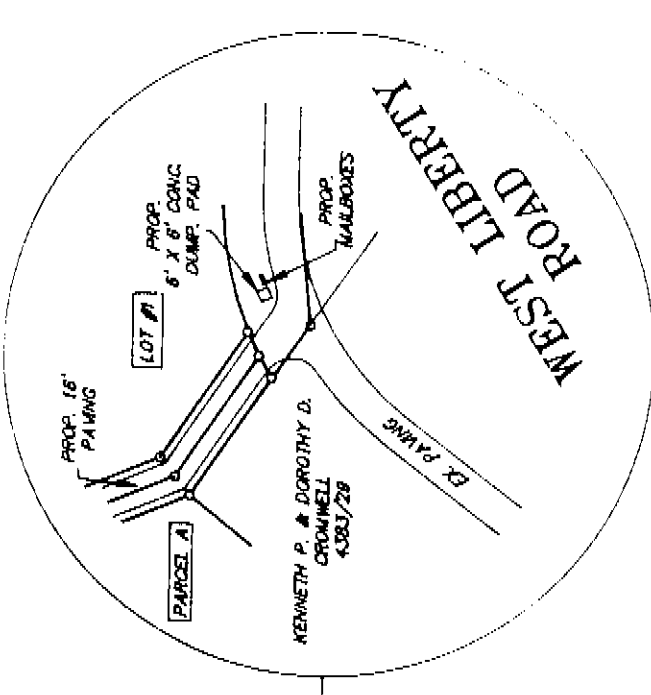
GENERAL NOTES:

20) THERE ARE NO EXISTING UNDERGROUND STORAGE TANKS ON SITE.

21) THIS PLAN IS TO BE USED FOR REFERENCE ONLY AND NOT TO BE USED FOR TITLE SEARCH.

22) NO FILLING OR CONSTRUCTION IS PERMITTED IN ANY WETLAND OR FLOODPLAIN WITHOUT PERMIT APPROVAL FROM ALL CONCERNED AGENCIES.

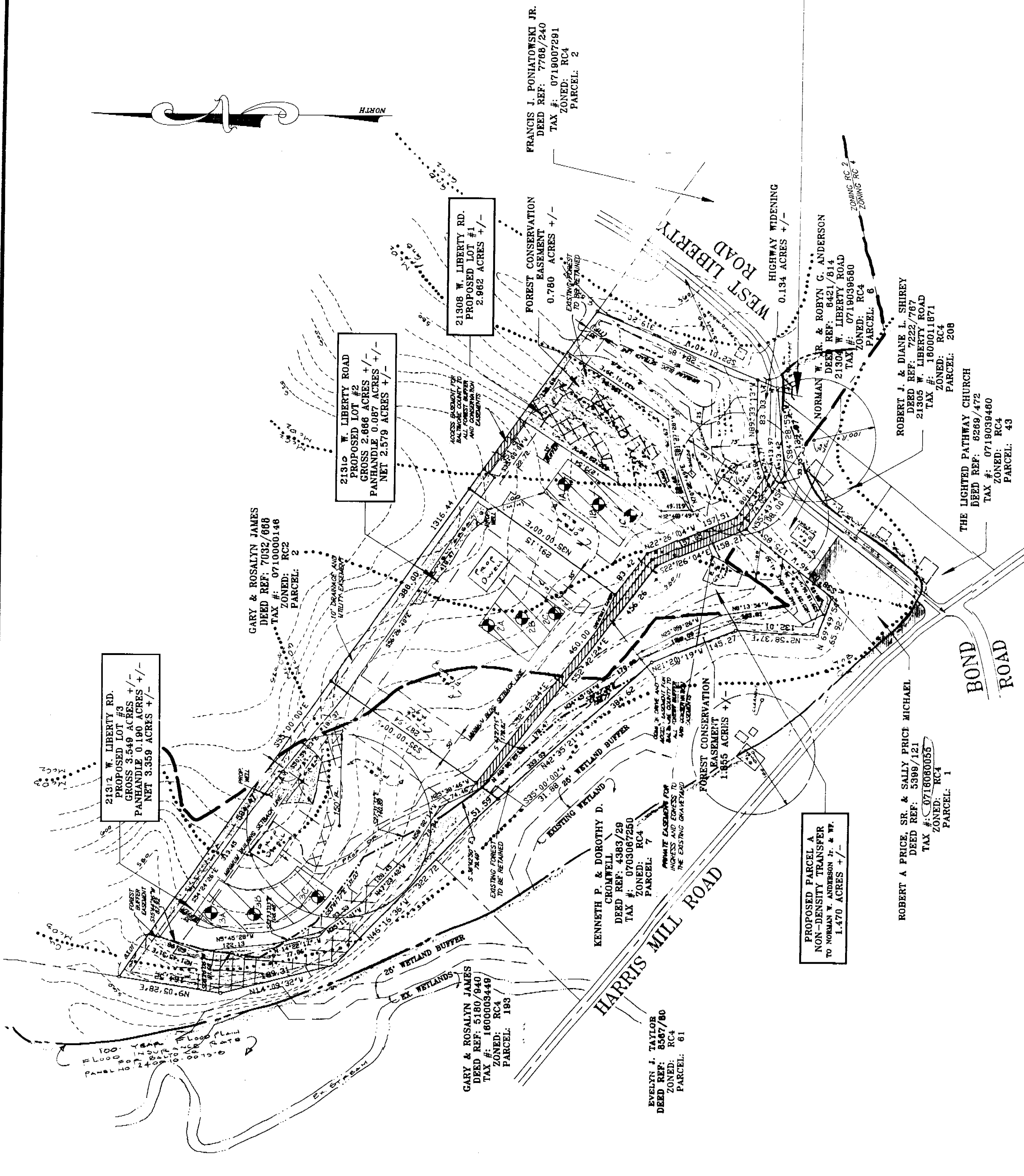
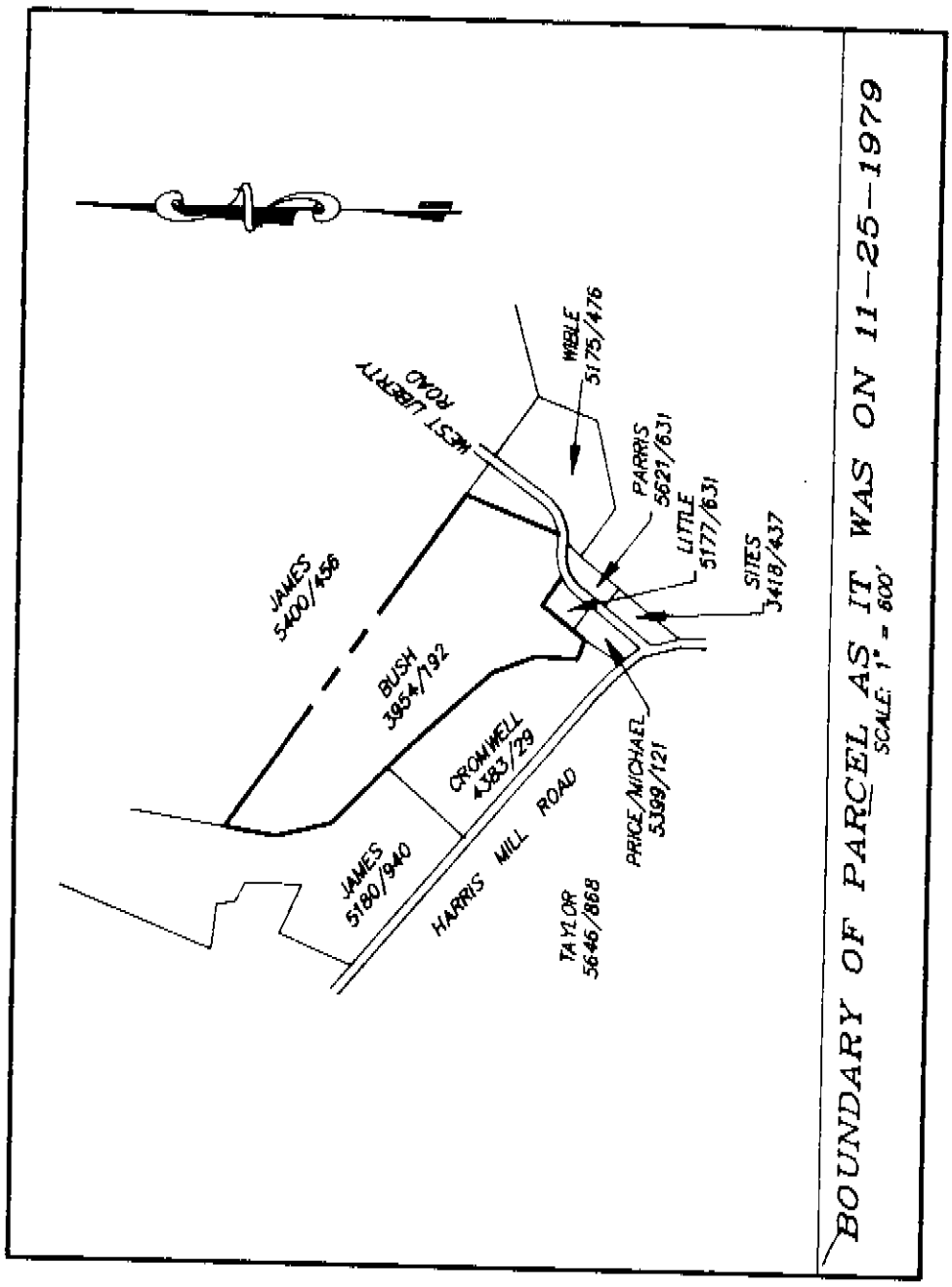
CONDITIONS OF ZONING CASE HEARING NO. 93-289-SPH:
THE AMERSON'S THEIR HEIRS, SUCCESSORS OR ASSIGNS, SHALL NOT BE
ABLE TO RESTRICT ACCESS TO THE GRAYVARD ON PARCELS "A" FOR LEGITIMATE
VISITATION PURPOSES. THERE SHALL BE NO IMPROVEMENTS LOCATED ON
PARCELS "A".
THERE WILL BE NO FURTHER SUBDIVISION PERMITTED ON THIS SITE.

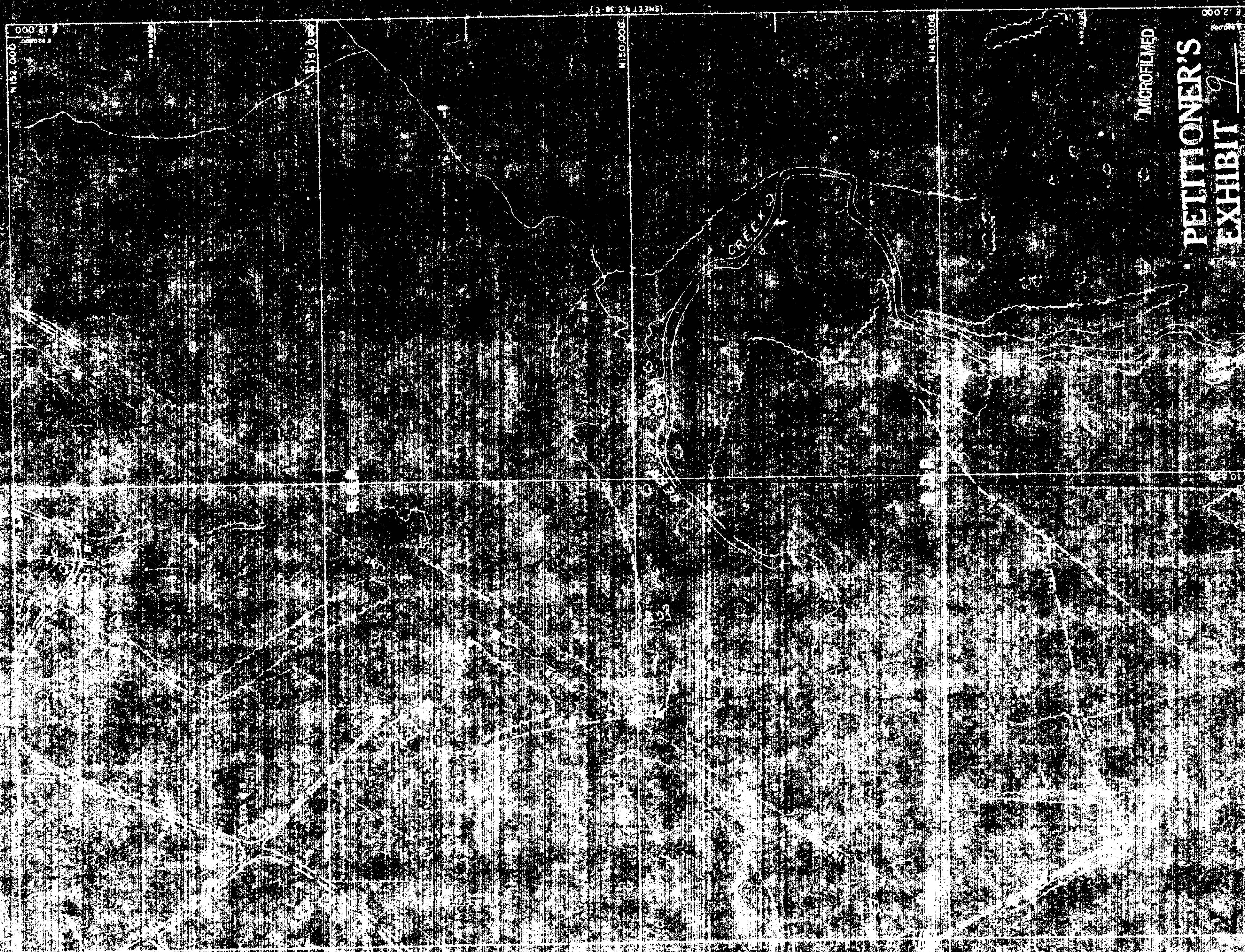


**ROBERT R. WILSON
AND ASSOCIATES, INC.**

MINOR SUBDIVISION OF
HENNING PROPERTY

ORSUCH HILLS"
MICROFILMED
P. 94
M. 100
SUBDIVISION NO. 94915 M
PETITIONER
7TH ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND
EXHIBIT 2





MICROFILMED

**PETITIONER'S
EXHIBIT 9**

TEST SHEET

NOTES

GEORGE SUCH MILLS

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2007-08-01

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IN THE MATTER OF THE * BEFORE THE
THE APPLICATION OF * COUNTY BOARD OF APPEALS
TODD MORRILL *
FOR SPECIAL HEARINGS AND *
VARIANCE ON PROPERTY LOCATED *
ON THE NORTHWEST SIDE OF W. *
LIBERTY ROAD, 208' E OF C/L *
HARRIS MILL (21300 W. *
LIBERTY ROAD) *
7TH ELECTION DISTRICT *
* * * * *
* * * * *
* * * * *

OPINION

This case comes on appeal of the Deputy Zoning Commissioner's March 30, 1995 decision in which the Petitions for Special Hearing in the instant case were granted and Petition for certain Variances was Dismissed as Moot. The matter was heard de novo in a single day of testimony; the Petitioner was represented by Howard L. Alderman, Jr., Levin & Gann; People's Counsel participated in the matter and appeared as Appellant represented by Carole S. Demilio, Deputy People's Counsel. It should be noted that there were no Protestants below.

Appearing for the Petitioner was Jeffrey C. Schultz of McKee and Associates, Inc., Civil Engineer who prepared the plat to accompany the Petitions for Zoning Variance and Special Hearing, and the Petitioner, Todd L. Morrill, and Jeffrey Long, Baltimore County Office of Planning. Appearing for People's Counsel was Paul Solomon, former Chief of the Environmental Planning Section of the Baltimore County Office of Planning and Zoning. Testimony was received in a single day and memoranda received from counsel in lieu of closing argument. This case was subsequently deliberated in open hearing.

Case Nos. 96-263-SPH; 95-264-SPH; 95-265-V Todd Morrill 2

The properties in question are the lot at 21300 W. Liberty Road ("Morrill lot") as well as Parcel A of the Gorsuch Hills subdivision located in the 3rd councilmanic district of Northeast Baltimore County. Parcel A was the subject of a prior Special Hearing, Case No. 93-289-SPH. The Morrill lot is located at the northern intersection of Harris Mill Road and W. Liberty Road, is roughly rectangular, .494 acres in area, is zoned RC-4, and is partially traversed by Harris Mill Road and W. Liberty Road. Parcel A abuts the Morrill lot at the northeast corner of the Morrill Lot, is roughly 1.47 acres in area, is split-zoned RC-2 and RC-4 and is part of the Gorsuch Hills subdivision. The Morrill lot was created as a lot of record in 1958, by the sale of the property from Albert and Elsie Sites to David and Eva Hill (Petitioner's Exhibit No. 7); in 1966, David and Eva Hill sold the Morrill lot to Hugh and Lillian Poe (Petitioner's Exhibit No. 6); in 1973, the property was conveyed to Robert Price, Sr. and Sally Price Michael; and on September 9, 1994, the property was conveyed to Mr. Todd L. Morrill, Petitioner in the instant case.

Parcel A is a parcel which was part of the Gorsuch Hills subdivision but which has no density units assigned to it for the purposes of residential development. Parcel A is also the subject of the Special Hearing Case No. 93-289-SPH before the Deputy Zoning Commissioner of Baltimore County wherein the parcel was stipulated to be transferred to the adjacent property owner for "non-density purposes". In the Petitions for Special Hearing, the Petitioner seeks approval to permit a well and septic system to be located on

Case Nos. 96-263-SPH; 95-264-SPH; 95-265-V Todd Morrill 3

the adjoining Parcel A to support the construction of a single family dwelling on the Morrill lot; further, Petitioner seeks the use of the Morrill lot for the construction of a single-family dwelling as a lot created prior to the adoption of the R.C. zones and to determine that the proposed building envelope met building setback requirements of the Baltimore County Zoning Regulations (BCZR) Section 1A03.4.B.2 or, in the alternative, if the Board determines that previously adopted setback requirements of the BCZR 1A03.B.4 (per Bill No. 98-75) are applicable, to consider Petition for Variance from the aforementioned building setbacks. The Petitioner seeks Special Hearing for the placement of well and septic on Parcel A as a result of failed percolation tests on the Morrill Lot to support a single-family dwelling. The zoning history of the Morrill Lot is somewhat difficult to ascertain. The official zoning map which was adopted by the County Council in 1971, was created using a photogrammetric map which was performed in April, 1961; that zoning map shows an "L" shaped building on the Morrill lot which was zoned B.L. along with neighboring properties about the intersection of Harris Mill Road and W. Liberty Road, with areas all around the B.L. zoned properties being zoned R.D.P. (Rural Deferred Planning). Exactly when the Morrill lot was zoned B.L. as opposed to any other residential zoning classification (R-6) is not clear, but evidence indicates that a general store was in operation on the Morrill lot dating back at least to the 1960s. BCZR Section 304, (1955) described use of undersized single family lots and the criteria to accomplish such use. At the time of the

Case Nos. 96-263-SPH; 95-264-SPH; 95-265-V Todd Morrill 4

promulgation of the BCZR (1955), the B.L. classification allowed residential uses with height and area requirements described in Section 232; Section 232.1, 2, and 3 refer one to the 1955 BCZR Section 302 and 303.1 to ascertain the area requirements. Section 302 indicates that, in the absence of a predominant surrounding residential zone, the R-6 area requirements shall govern. The instant lot was created subsequent to the promulgation of those zoning regulations and recorded in the Land Records of Baltimore County. The RC-2 and RC-4 zoning classifications were created under Bill No. 98-75 and amended by Bill Nos. 178-79, 199-90 and 113-92.

Mr. Jeffrey Schultz testified regarding the zoning and ownership history of the Morrill lot and Parcel A. He also testified concerning the proposed development, more thoroughly described on Petitioners Exhibit No. 1 that the Petitioner would provide access to an existing graveyard on Parcel A; that the Petitioner is willing to re-record the consolidation of the Morrill lot and Parcel A; that the placement of water, well and septic on Parcel A has no effect on the current and future possible uses on Parcel A as contemplated in the approval of the Gorsuch Hills subdivision; that the Morrill lot is larger than an adjoining property owner's (Anderson) lot; and that denial of Special Hearing and/or Variances would result in reduced density on the RC-4 Morrill lot presenting practical difficulty for the Petitioner. On cross-examination, Mr. Schultz indicated that he does not know if the Morrill lot, created in 1958, was approved by the Planning

Case Nos. 96-263-SPH; 95-264-SPH; 95-265-V Todd Morrill 5

Office at that time; that Petitioner plans approximately 1,500 square feet of impervious surface; that the septic reserve area, as proposed, will abut but not traverse the forest conservation area; that at the time of creation of the lot, the lot was not undersized per the BCZR then in existence; and, that it met the area requirements of the R-6 and B.L. zoning classifications in 1958. Traversing the property described by Mr. Schultz is Harris Mill Road and W. Liberty Road with no right-of-way to describe the aforementioned roads; Mr. Schultz indicated that a right-of-way was not required because the Morrill lot is an existing lot of record. Mr. Schultz also indicated that the Morrill lot remains unaltered since its creation in 1958.

Mr. Todd Morrill provided some historical information concerning the prior use of the Morrill lot as a general store and grist mill, going on to state that the foundation of the former grist mill still exists. On cross-examination, Mr. Morrill indicated that he intends to consolidate Parcel A and the Morrill lot.

Jeffrey Long, of the Baltimore County Office of Planning, indicated that Baltimore County would not oppose a lot line adjustment so long as the adjustment would not result in additional density, going on to state that, had the Petitioner owned Parcel A and the Morrill lot before the subdivision, that the parcel could have been adjusted with the support of the Office of Planning. Mr. Long also opined that the proposed single-family dwelling and placement of well and septic on Parcel A has no negative impact on

Case Nos. 96-263-SPH; 95-264-SPH; 95-265-V Todd Morrill 6

the potential agricultural use of Parcel A. Mr. Long's testimony concluded the Petitioner's case.

For People's Counsel, Mr. Paul Solomon testified to the history of R.C., R.D.P. and subsequently, R.C. zoning classifications. Mr. Solomon opined that the use of Parcel A for well and septic is a de facto use of density and that his position would be the same if the Petitioner were to combine Parcel A and the Morrill lot. He went on the state that Parcel A could be used for agricultural purposes, and that the placement of well and septic reduces the area usable for such agricultural endeavors.

The description of Parcel A in prior Case No. 93-289-SPH was stipulated as a non-density area to exist as open-space for additional back yard of the adjoining property owners, Norman and Robyn Anderson. The Andersons never completed the purchase of Parcel A. One of the questions for this Board is whether the placement of well and septic on Parcel A to support a single-family dwelling on the Morrill lot can be accomplished in view of the prior case. The Board finds that the proposed placement of well and septic on Parcel A is within the spirit of the earlier case in providing open space as part of the Gorsuch Hills subdivision. People's Counsel argues that the placement of the well and septic constitutes a use of the parcel which carries implied density. Mr. Jeffrey Schultz points out that the denial of placement of well and septic on Parcel A results in rendering the Morrill lot as unusable, thereby reducing density in the area. The Board finds Mr. Solomon's testimony rather unconvincing as to the agricultural

Case Nos. 96-263-SPH; 95-264-SPH; 95-265-V Todd Morrill 7

use of Parcel A, and finds that the proposed well and septic may be placed on Parcel A as such placement does not interfere with the open space provided as part of the Gorsuch Hills subdivision.

The next issue for the Board to decide is whether the proposed building envelope on Petitioner's Exhibit No. 1 meets the applicable setback requirements. At issue is which set of setback requirements are applicable to this case: BCZR promulgated in 1955 which calls for setbacks in accordance with the R-6 zoning classification; the setback requirements for RC-4 zoning classifications promulgated in 1975 which would result in necessitating the requested variance in the instant case; or the current RC-4 setback requirements found in the current edition of the BCZR. The Board finds that the current height and area regulations of the BCZR for RC-4 zones apply and that per BCZR 1A03.4.B.2, the proposed building envelope is in compliance. Two points must be explored at this point. The Board, sua sponte, questions whether the northernmost corner of the proposed building envelope is in fact at least 100 ft. from the acute angle formed by the RC-2 and RC-4 zone line aforesaid to the proposed septic area; the Board shall stipulate that the proposed building envelope shall be at least 100 ft. from that zone line, and that any error in drafting shall result in reducing the proposed building envelope to meet that requirement. Second, People's Counsel argues that the front building setback on W. Liberty Road does not comply with BCZR 1A03.4.B.2.a. or b.; the Board finds that W. Liberty Road is a public road, but the facts of this case indicate that neither

Case Nos. 96-263-SPH; 95-264-SPH; 95-265-V Todd Morrill 8

Harris Mill Road nor W. Liberty Road are described in a right-of-way nor an easement to traverse the Morrill lot. Neither W. Liberty Road nor Harris Mill Road is a private road; therefore, the Board finds that the Petitioner is left with little guidance but the previous setback requirements described in 1955 BCZR for R-6 development wherein building setback is required to be an average setback from nearby properties. The Board finds, because W. Liberty Road and Harris Mill Road are not described as a County right-of-way and because they are not private roads, that the proposed setbacks meet the aforementioned setback requirements and that the proposed building envelope setback is consistent with nearby properties, and therefore the zoning regulations in effect at the time the lot was created. Therefore, the Board finds that, pursuant to proper application for a building permit and compliance with engineering requirements of septic reserve and well, the determinations sought in this Special Hearing case will be granted, thereby negating the need for consideration of the Petitions for Variance in this matter. However, the Board is compelled to address the Variance issue in this matter.

In Cromwell v. Ward, 102 Md.App. 691 (1995), Court of Special Appeals, provides guidance for the Board in consideration of variances. First to be determined is whether the property is unique; having passed the first test, the Board is to determine whether strict compliance with the zoning regulations would result in practical difficulty or unreasonable hardship for the Petitioner. This Board finds that the instant Morrill property,

Case Nos. 95-263-SPH; 95-264-SPH; 95-265-V Todd Morrill 9
being an undersized lot for the RC-4 classification, is unique in several respects; first, the property is traversed by two public roads which are not described as a right-of-way thereby reducing the usable area to the detriment of the Petitioner; second, the Morrill lot was created in 1958 and was in compliance with then existing zoning regulations and usable for the purposes of development as a residence until the promulgation of the RC-4 zoning classification, only to be once again brought back into compliance by the revision of the RC-4 area regulations. The mere existence of this lot as an undersized lot in compliance with prior zoning regulations and subsequent revision of the regulations makes the disposition of this property unique when compared to other properties in Baltimore County. The second test being that the strict adherence of the zoning regulations would result in practical difficulty or unreasonable hardship is illustrated by the potential denial of the variance and subsequent inability of the petitioner to develop the land as proposed. The Board finds that such denial would constitute an unreasonable hardship; therefore, the Board would grant the Variance were it asked to do so.

ORDER

IT IS THEREFORE this 20th day of May, 1996 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing in Case No. 95-263-SPH to approve residential use of an existing lot created prior to the adoption of the R.C. zones for one single family dwelling be and is hereby GRANTED; and it is further

Case Nos. 95-263-SPH; 95-264-SPH; 95-265-V Todd Morrill 10
ORDERED that the building setback requirements of Section 1A03.4B.2 of the Baltimore County Zoning Regulations are applicable to the subject property; and that the Petition for Special Hearing in Case No. 95-264-SPH to permit a modification to the relief granted in prior Case No. 93-289-SPH to permit a well and septic system to be located as shown on Petitioner's Exhibit 1 be and is hereby GRANTED; and it is further

ORDERED that the Petition for Variances in Case No. 95-265-A be and is hereby DISMISSED AS MOOT.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

Robert O. Schuetz, Chairman

Lawrence M. Stahl

Christine K. Howanski



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

Peter Max Zimmerman
People's Counsel
for Baltimore County
Room 47, Old Courthouse
400 Washington Avenue
Towson, MD 21204

RE: Case Nos. 95-263-SPH,
95-264-SPH and 95-265-V
Todd Morrill - Petitioner

Dear Mr. Zimmerman:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules and Procedure. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

encl.

cc: Howard L. Alderman, Jr., Esquire
Mr. Todd Morrill
Mr. Geoffrey Schultz
McKee & Associates, Inc.
Pat Keller
Timothy M. Kotroco
W. Carl Richards, Jr. /PDM
Docket Clerk /PDM
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

IN RE: PETITIONS FOR SPECIAL HEARING
AND VARIANCE, NWS Liberty Rd., 340'
North of the c/l of Harris Mill Road.
(21300 West Liberty Road)
7th Election District
3rd Councilmanic District

BEFORE THE
COUNTY BOARD
OF APPEALS FOR
BALTIMORE COUNTY

Case Nos. 95-263-SPH,
95-264-SPH and
95-265-A

APPELLEE/PETITIONER'S POST-HEARING MEMORANDUM

Todd Morrill, Appellee-Petitioner (referred to herein as "Morrill" or "Petitioner"), by and through his undersigned legal counsel, submits this Post-Hearing Memorandum as directed by the County Board of Appeals for Baltimore County in support of the relief requested in the above-captioned matters.

STATEMENT OF THE CASE

These Petitions for Special Hearing and Variance are before the County Board of Appeals for Baltimore County (the "Board") after having been granted in part and denied in part as moot by the Deputy Zoning Commissioner for Baltimore County. The Petitioner seeks approval of the residential use of an existing lot¹, which was created prior to the adoption of the Resource Conservation ("RC") zones in Baltimore County (the "Morrill Lot"), for the erection of a single family dwelling. In connection with the proposed construction of the one dwelling, the Petitioner

Case No. 95-263-SPH The existing lot is more particularly identified as 21300 West Liberty Road. The lot is zoned RC-4 and is approximately 0.494 acres in size.

seeks a determination, by way of Special Hearing, of the applicable setbacks² under the Baltimore County Zoning Regulations ("BCZR"), or in the alternative, a variance based on the uniqueness of the property and the effect of the BCZR thereon³. Also by way of Special Hearing, the Petitioner seeks modification to the decision rendered in a previously approved Special Hearing filed by Richard W. Henning, et al, Petitioners⁴ (the "Henning Case") to permit an adjoining, residentially split-zoned parcel, created for non-density purposes ("Parcel A") to be combined with the Morrill Lot such that the septic and well for the permitted single family home could be located on the RC4 zoned portion of Parcel A.⁵

On March 30, 1995, the Deputy Zoning Commissioner for Baltimore County: i) approved the residential use of the Morrill Lot for the construction of a single-family home; ii) found that the current BCZR § 1A03.4B.2 was applicable and that the proposed dwelling met all applicable setbacks thereunder; iii) found that the proposed use of a well and septic system for a portion of the land presently identified as Parcel A would "not interfere with the openness of Parcel A" which was the intention of creating a non-density parcel in prior Case No. 93-298-SPH⁶; and iv) dismissed the Petition for Variance as moot.

² Also Case No. 95-263-SPH. One of three setback requirements appear to be applicable: i) the current BCZR requirements of Section 1A03.4B.2; ii) the requirements of the BCZR when the lot was created; or iii) BCZR § 1A03.4B.2 as it existed prior to the most recent modifications of the RC-4 zones pursuant to Baltimore County Council Bill No. 98, 1975.

³ The Petition for Variance is captioned as Case No. 95-265-A.

⁴ This case was decided by the Deputy Zoning Commissioner for Baltimore County on May 25, 1993 and is docketed as Case No. 93-289-SPH (introduced in these proceedings as Petitioner's Exhibit No. 8). No appeal of that case was filed to this Board.

⁵ This Petition for Special Hearing is docketed as Case No. 95-264-A.

⁶ Deputy Zoning Commissioner's decision at pages 3-4.

The Office of People's Counsel entered their appearance in the three subject cases on or about February 14, 1995. On or about April 27, 1995, the People's Counsel noted an appeal of the three subject cases to this Board. A *de novo* hearing was held by this Board on October 25, 1995, at the conclusion of which the Board requested that Counsel for the Petitioner and People's Counsel submit a Post-Hearing Memorandum to address the issues raised before this Board.

ISSUES PRESENTED

- I. IS THE USE OF AN ADJOINING, RESIDENTIALLY ZONED PARCEL, CREATED AS A "NON-DENSITY" PARCEL UNDER THE BCZR, FOR WELL AND SEPTIC VIOLATIVE OF THE PURPOSES FOR WHICH THAT PARCEL WAS CREATED?
- II. DOES THE PROPOSED DEVELOPMENT ENVELOPE ON AN EXISTING LOT OF RECORD MEET THE APPLICABLE SETBACK REQUIREMENTS OR, IN THE ALTERNATIVE, HAS PETITIONER MET HIS REQUIRED BURDEN TO JUSTIFY A VARIANCE FROM THE BCZR?

STATEMENT OF FACTS

The Morrill Lot was created in 1958 by virtue of a deed from Albert W. And Elsie S. Stites to David F. And Eva C. Hill.⁷ As testified to by Mr. Morrill, the Morrill Lot was previously used as a country store and a mill.⁸ On August 15, 1966, the Morrill Lot was conveyed, by a metes and

⁷ This deed, dated December 31, 1958 is recorded among the Land Records of Baltimore County in Liber 3470, page 254 and exists in the record of the above-captioned cases as Petitioner's Exhibit No. 7.

⁸ Documentary evidence of these uses, submitted by Mr. Morrill in the form of an article copied from *The Sun Magazine*, exists as Petitioner's Exhibit No. 12 in the record of the above-captioned cases.

bounds description to Hugh L. And Lillian N. Poe.⁹ Subsequently, that same lot of ground was granted and conveyed by the Poe's and Dean William and Ellen Oleita Kenney to Robert Price and Sally Price Michael.¹⁰ Finally, on September 9, 1994, Sally Price Michael conveyed the Morrill Lot to Todd Morrill, your Petitioner.¹¹ At the time the Morrill Lot was created it was zoned R-6 under the then applicable BCZR.¹² Sometime subsequent to its creation, the Morrill Lot was zoned Business Local (BL). Mr. Geoffrey Schultz, testifying on behalf of Mr. Morrill indicated that Baltimore County records were incomplete and, therefore, the precise time that the commercial zoning classification was attached to the Morrill Lot could not be determined. Mr. Schultz noted, without contradiction or objection, that under Section 302 of the 1955 and 1958 BCZR, the Area Regulations applicable to BL zoned properties¹³ and used for residential purposes were the same.

⁹ This deed of conveyance is recorded among the Land Records of Baltimore County in Liber 4658, page 243 and exists in the record of the above-captioned cases as Petitioner's Exhibit No. 6.

¹⁰ The conveyance to Robert A. Price, Sr. and Sally Price Michael is evidenced by a deed dated October 1, 1973, recorded among the Land Records of Baltimore County in Liber 5399, page 121 and exists in the record of the above-captioned cases as Petitioner's Exhibit No. 5. As noted in the "BEING" clause, the Kenney's were joined in it as co-grantors of this deed as a result of a recorded contract that the Kenney's had with the Poe's.

¹¹ The conveyance from S.P. Michael to Todd Morrill is recorded among the Land Records of Baltimore County in Liber 10801, page 223 and exists in the record of the above-captioned cases as Petitioner's Exhibit No. 4. As noted therein, the said Robert A. Price, Sr. passed away on or about September 30, 1991.

¹² Mr. Geoffrey Schultz, appearing at the hearing before the Board on behalf of Mr. Morrill, was prohibited on direct examination from testifying that he had been advised verbally by officials of Baltimore County that the Morrill Lot was zoned R-6 at the time of its creation. However, on cross- and on re-direct examination, Mr. Schultz testified without contradiction or objection that the Area Regulations in Section 211 of the 1955 BCZR applicable to R-6 zoned properties were applicable to the Morrill Lot at the time of its creation in 1958.

¹³ As noted by Mr. Schultz, and as identified on the official County 200 foot zoning map adopted in 1971 (Petitioner's Exhibit No. 9), the Morrill Lot was zoned BL in 1971.

Area Regulations applicable to R-6 zoned properties.¹⁴ Moreover, Mr. Schultz and Mr. Morrill testified that there remains on the Morrill Lot one of the foundations from the previously erected structures.¹⁵

Mr. Schultz, who described his position and responsibilities with McKee & Associates, Inc., also identified, without objection, that he has appeared numerous times and has testified before the Board, the Zoning Commissioner and similar forums and that the Plat of the subject property, introduced as Petitioner's Exhibit No. 1, was accurate and was prepared under his direction and control. Mr. Schultz described the Morrill Lot as presently being zoned RC-4, irregular in shape and approximately 94 feet wide at its most narrow point and approximately 110 feet at its widest and, as shown on Petitioner's Exhibit No. 1, is partially bisected by the existing Harris Mill Road. Mr. Schultz identified 6,000 square feet as the minimum lot size necessary to create a new lot in a R-6 zone in 1958 and that the Morrill Lot was created as a 21,518 square foot lot at that time and it remains the same size today. Parcel A was described by Mr. Schultz as irregular in shape, split zoned RC-4 and RC-2, and was created as part of the Minor Subdivision of Gorsuch Hills¹⁶ and Special Hearing Case No. 93-289-SPH, the decision in which is included in the instant record as

¹⁴ The pertinent provisions for R-6 zones (Section 211), BL zones (Section 232), Height and Area Requirements for Residences in Business zones (Section 302) and From Yard Averaging in Residence and Business zones (Section 303) exist in the record in the above-captioned cases as Petitioner's Exhibit No. 10.

¹⁵ The existence of this foundation is further supported by the official comment from Mr. Robert W. Bowling to Arnold Jablon, then Director of ZADM, dated February 11, 1995, specifically the last sentence which reads "Per Topo Sheet NE 38B, dated April 1961, there is an existing building on this lot. Please clarify." See Petitioner's Exhibit No. 11 (Emphasis added).

¹⁶ The Gorsuch Hills Minor Subdivision Plat as approved by Baltimore County, known also 94-095-MP, was admitted into evidence as Petitioner's Exhibit No. 2 and exists as an exhibit to Petitioner's Exhibit No. 3, *infra*.

Petitioner's Exhibit No. 8. Additionally, Parcel A contains an existing graveyard, continued access to which and the dedication of a Forest Conservation Easement, of irregular shape and dimensions, to Baltimore County¹⁷ were conditions of the order creating Parcel A as a non-density parcel. Mr. Schultz further opined that, based on his familiarity of the subject property and other properties in the general area, the shape and configuration of the Morrill Lot and the fact that, as shown on Petitioner's Exhibit No. 1, it is bisected on the Harris Mill Road, makes the Morrill Lot unique as compared to other properties in the neighborhood.

As to Parcel A, Mr. Schultz testified that the proposed septic area, being comprised of approximately 4,000 - 5,000 sq. ft., has been approved in accordance with the applicable state and County requirements as administered by the County Department of Environmental Protection and Resource Management. Additionally, Mr. Schultz testified that the proposed well area identified on Parcel A, as shown more clearly on Petitioner's Exhibit No. 1, meets the state and County requirements. The proposed well and septic area are both within the RC-4 zoned portion of Parcel A. Mr. Schultz, who was familiar with the decision of the Deputy Zoning Commissioner in the Henning Case indicated that, as stated therein, Parcel A was to be transferred to Mr. and Mrs. Norman W. Anderson, Jr., for non-density purposes, to provide the Andersons with additional space to the rear of their property.¹⁸ Both Messrs. Morrill and Schultz testified that Mr. Morrill did not have any involvement in the creation of the Morrill Lot or Parcel A. Mr. Schultz indicated further

¹⁷ Mr. Morrill acquired title to Parcel A from David W. and Richard W. Henning by virtue of a deed dated December 7, 1994 and recorded among the Land Records of Baltimore County in Liber 10939, page 305 and which was admitted into evidence as Petitioner's Exhibit No. 3.

¹⁸ See the decision in the Henning Case at pages 2-3.

that he had been directed by Mr. Morrill, upon the complete approval of the relief necessary to construct a dwelling on the Morrill Lot, to delineate access in and across Parcel A in connection with the graveyard located thereon.

Both Mr. Schultz (on behalf of Mr. Morrill) and Mr. Paul Solomon¹⁹ (who was called by and compensated by the Baltimore County Office of People's Counsel) testified that no additional density would be created as a result of the proposed location of the well and septic area on Parcel A. A single-family home was acknowledged as a principal, permitted use of right on the Morrill Lot by both of these witnesses.

Mr. Jeffrey Long, a present employee of the Baltimore County Office of Planning and Zoning appeared and testified in support of the relief requested by Mr. Morrill. Mr. Long described in detail his duties and responsibilities²⁰ and his familiarity with the BCZR, the Development Regulations of Baltimore County and the Development Review Committee ("DRC") process. Being familiar with the Gorsuch Hills Minor Subdivision, Mr. Long opined that an alternative to creating Parcel A as a non-density parcel for conveyance to the Andersons, would have been to reconfigure the existing Anderson property to include the area of Parcel A by a DRC approved Lot Line Adjustment. Mr. Long also testified without contradiction that had Mr. Morrill owned the Morrill Lot at the time the Gorsuch Hills Minor Subdivision was approved, the area of Parcel A could have

¹⁹ Mr. Solomon is a retired Baltimore County employee who held positions in the Office of Planning and Zoning and the Department of Environmental Protection and Resource Management. A resident of Pennsylvania, Mr. Solomon indicated that he owns several farms and that he had also developed a portion of one of his farms into five (5) single-family residential lots.

²⁰ Mr. Long also testified that he had appeared on numerous occasions before this Board, the Zoning Commissioner and in similar forums to offer testimony and opinions on development and zoning issues.

been included with the Morrill Lot by way of DRC approved Lot Line Adjustment, without ever creating a non-density Parcel A. Finally, Mr. Long testified that he was familiar with the requested relief of Mr. Morrill and that the Office of Planning and Zoning had no objection to the requested relief and that, if granted, the requested relief would have no negative impact on agricultural operations or activities in this area of the County.

Mr. Solomon, testifying on behalf of the Office of People's Counsel, indicated that zoning lines in the RC zones generally followed the resource to be protected and not necessarily any ownership lines. In his opinion, Mr. Solomon testified that non-density parcels could not be improved with any density development nor should any uses relating to lots be located thereon. As to available uses for Parcel A, Mr. Solomon suggested that the entire area could be planted with Paulownia (*paulownia tomentosa*) trees that could be harvested in 20 to 30 years. Mr. Solomon offered extensive testimony on why commercially used properties should not be permitted to utilize adjoining RC zoned property for well or septic areas, however, on cross-examination, Mr. Solomon did acknowledge that the Morrill Lot was presently zoned RC-4, that a single-family home is permitted as of right and that no commercial uses were even being proposed. Being generally unfamiliar with the Lot Line Adjustment process, Mr. Solomon was unable to opine as to whether the acreage comprising Parcel A could have been combined with the Morrill Lot by way of DRC approved Lot Line Adjustment at the time of approval of the Gorsuch Hills Minor Subdivision.

As to the proposed improvement of a lot of record that is smaller than the minimum lot size that would be required if the lot were being created under existing RC-4 regulations, Mr. Schultz testified on re-direct and re-cross examination that in 1958, the Morrill Lot was created by a duly recorded deed, that based on available evidence the lot complied with then applicable height and

area requirements and that whether the owner owned any adjoining land was immaterial because at the time the Morrill Lot was created it exceeded the applicable 6000 square foot minimum lot size in R-o zones.²¹ Mr. Schultz then opined, without contradiction or objection, that the Morrill Lot was a validly created lot and remains so today.

With respect to the requested variances, Mr. Schultz indicated that a "building envelope" and not a building footprint was shown on Petitioner's Exhibit No. 1. On cross-examination, Mr. Schultz testified that the approximate size, or footprint, of the proposed home was 24 feet deep by 40 feet long. As indicated on Petitioner's Exhibit No. 1, the building envelope as drawn meets the required setbacks under the existing RC-4 zoning requirements.²² As to a potential finding by this Board that the 1955 BCZR are applicable, Mr. Schultz indicated that the front yard setback requirements were met as shown on Petitioner's Exhibit No. 1, and that the depth of the building envelope could be modified to increase the rear yard setback for the envelope to a total of 30 feet, which setback would be even greater to the rear face of the proposed home. Therefore, Mr. Schultz opined that the Morrill Lot could be improved without a variance under the current RC-4 regulations and under the 1955 BCZR if the depth of the building envelope were reduced to a distance of 30 feet from the rear property line as previously authorized by Mr. Morrill.

Mr. Schultz testified that if the Board were to apply the RC-4 regulations as adopted by Council Bill No. 98, 1975, the Petitioner would face practical difficulty in using the Morrill Lot for a permitted purpose, absent the granting of the needed variance. Mr. Schultz testified as to the

²¹ See Section 304, Baltimore County Zoning Regulations (1955 Edition), adopted on March 30, 1955 in accordance with Title 30, Section 532(c) of the Code of Public Local Laws of Baltimore County.

²² BCZR § 1A03.4 B 2.

uniqueness of the Morrill Lot as compared to other lots in the neighborhood that are zoned RC-4. The uncontradicted testimony of Mr. Schultz was that, in connection with a granting of the requested variance: i) there would be no increase in residential density beyond that which exists as a matter of record and under the BCZR; ii) the relief requested is the minimum relief necessary; iii) that the relief requested can be granted so that substantial justice can be done to both the Petitioner and other property owners in the district;²³ iv) that strict compliance with the 1975 provisions of the BCZR would prevent unreasonably the use of the Morrill Lot for a permitted purpose; and v) that the requested relief can be granted so that the spirit and intent of the BCZR will be observed and public health, safety and welfare secured.

Finally, Mr. Schultz testified that no density was being utilized for the Morrill Lot other than its present status as an existing lot of record as created in 1958. There was no testimony or other evidence that the Morrill Lot was not validly created by virtue of the 1958 deed. No subdivision is being proposed by the relief requested. On cross-examination, Mr. Schultz was asked if the existing roads were to be widened or additional right-of-way for future widening was to be dedicated. Mr. Schultz indicated that since subdivision was not an issue, no roads would be widened and no rights-of-way would have to be dedicated.

²³ There were no property owner Protestants present either at the hearing held before the Deputy Zoning Commissioner or that held before this Board.

ARGUMENT

I. The opposition's focus on the characterization of Parcel A as a "non-density" parcel is a "non-issue" as no additional density is being created.

The opposition has taken the position that because Parcel A was identified in the Henning Case as a "non-density" parcel, there can be no use of that Parcel in any way related to development, either existing or proposed. However, People's Counsel is without any legal support or other basis in furtherance of that position.

Paul Solomon, testifying during direct examination on behalf of People's Counsel's position, referred with authority to the *Zoning Commissioner's Policy Manual* regarding the calculation of density on land in the same ownership that is separated by different zone lines. Referring to the Zoning Commissioner's Policy ("ZC Policy") 1A00.5 a, Mr. Solomon opined that density had to be calculated and used on each separately zoned parcel. The Petitioner does not quarrel with that policy in the above-captioned cases, it simply is not relevant. In this case, the Petitioner seeks to re-construct improvements (a new dwelling) on a lot of record zoned RC-4 and to locate the well and septic systems on that portion of Parcel A that is zoned RC-4.²⁴ If the Morrill Lot were split zoned, the well and septic system would have to be located in the same zone as the house.²⁵ The RC-2 zoned portion of Parcel A is to remain as shown on Petitioner's Exhibit No. 1, burdened only by the existing graveyard.

On cross-examination, Mr. Solomon attempted to discount the legal effect of the *Zoning*

²⁴ Parcel A is split-zoned RC-4 and RC-2. As shown on Petitioner's Exhibit No. 1 the well area and septic reserve area are located completely within that portion of Parcel A which is zoned RC-4.

²⁵ See ZC Policy 1A00.5 b(1)(c) at page 1A-3.1.

Commissioner's Policy Manual despite his reliance on it during direct examination with respect to a non-analogous situation. Mr. Solomon opined that the use of a "non-density" parcel for well, septic area or roadway access in connection with uses permitted on lots containing density was contrary to the reason that "non-density" parcels were created. Mr. Solomon's view of "non-density" parcels is clearly inapposite to the applicable regulations adopted by Baltimore County. In ZC Policy 1A00.4 b(1), the use of non-density parcels for access is clearly one of the purposes for which non-density parcels may be utilized. Mr. Solomon's position, when questioned on cross-examination about the uses of non-density parcels expressly permitted by County regulation, changed to an attack on the regulations themselves. However, Mr. Solomon was unable to refute the effect of County Council Bill No. 88, 1996²⁶ which created the scheme by which the *Zoning Commissioners Policy Manual* was adopted as part of the Code of County Regulations ("CCR").²⁷

The term "regulation" as used in the CCR includes statements that have general and future effect, are adopted to carry out a law administered by the agency adopting them and can be in any form including a "statement of policy" or a "statement of interpretation." County Code § 2-417(a)(1). Moreover, the Director of Zoning Administration and Development Management ("ZADM")²⁸ has full power and authority to make, promulgate, adopt and amend policies, rules or regulations in connection with the BCZR. County Code § 26-135(a). The adopted policies

²⁶ County Council Bill No. 88, 1990 codified, in § 2-416 *et seq.* of the County Code of Baltimore County, the statutes governing the creation and adoption of the Code of County Regulations.

²⁷ The *Baltimore County Zoning Commissioner's Policy Manual* was adopted on May 21, 1991 and was amended on May 13, 1992.

²⁸ The Board is advised that, as a result of a recent action by the County Council, the Director of ZADM is now identified as the Director of the Department of Permits and Development Management.

regarding the use of parcels created as "non-density" are fully effective and in no manner contravene the intent of the Resource Conservation Zones as enacted by the County Council. Moreover, the rules and regulations of an agency which are promulgated properly can not be disregarded, suspended or waived as long as the rules remain effective. *Hopkins v. Maryland Inmate Grievance Commission*, 40 Md. App. 329, 335 (1978).

Mr. Solomon acknowledged that if the requested relief is granted by this Board, there are two areas of Parcel A that would be potentially unavailable for other uses such as the planting of paulownia trees. Upon further examination, however, Mr. Solomon conceded that the unavailable area created on Parcel A by the water well was approximately 1 square foot (based on a 6 inch diameter well casing) and that the septic reserve area would, as described by Mr. Schultz, utilize approximately 4,000 square feet. Therefore, of the 1.47 ± acres (64,000 ± square feet) of Parcel A, Mr. Solomon acknowledged that if the requested relief is granted, approximately 4,001 square feet may be unavailable for the planting of paulownia trees.

Mr. Solomon was without any basis, other than his "feelings" and "understandings" to support his stated positions regarding the requested relief. Mr. Solomon's "belief" that the requested relief would, somehow, have a direct impact on the resources of the County is not shared by the County's agricultural specialist. By Inter-Office Correspondence to the Zoning Commissioner, dated February 28, 1995, Wally Lippincott, Jr. takes the extraordinary step of correcting previous written comments in this matter to clarify that the proposed relief has no direct negative impact on agricultural resources in this case, however, as the existing lot and the proposed additional ground

[Parcel A] is (sic) too small to support agricultural activities.²⁹ (Emphasis in original.)

The definitions of "Gross Density", "Gross Residential Density" and "Net Density" were deleted from the BCZR by Council Bill Nos. 106, 1963 and 100, 1970. The terms "density" and "non-density" are not defined in the BCZR. However, BCZR § 101 provides that "any word or term not identified in this section shall have the ordinarily accepted definition as set forth in the most recent edition of *Webster's Third New International Dictionary of the English Language, Unabridged*". That dictionary defines "density" as, *inter alia*, "the average number of individuals or units per space unit." Likewise, the prefix "non" is defined as the "absence of" something. Applying the ordinary meaning of these words as combined means the "absence of a number of individuals or units per space unit". Thus, Parcel A was created without any number of units per acre, i.e. there is no density associated with it. Mr. Morrill is not attempting to create or use any density which does not already exist on the Morrill Lot. He has available sufficient density to construct one single-family dwelling as of right in the RC-4 zone³⁰ and no more. The requested relief, as testified to by Mr. Schultz will not modify or increase that density.

Mr. Long, an official of the Baltimore County Office of Planning and Zoning, testified without contradiction that the use of Parcel A in conjunction with the Morrill Lot could have been

²⁹ The purported "concern" expressed by Mr. Lippincott, in his February 28, 1995 correspondence, relates to the use of "nondensity parcels zoned RC2 to be used for providing septic and well (sic) in order to support additional development in a RC2 or RC4 zone." (Emphasis added.) In this case the septic and well are located within the RC4 zone, the same zone as the Morrill Lot. Moreover, there is no "additional development" proposed; Mr. Morrill intends to build on the Morrill Lot one single-family dwelling. As testified to and acknowledged by Messrs. Schultz, Solomon and Long, there exists presently sufficient density for one dwelling.

³⁰ One-family detached dwellings are permitted as of right pursuant to BCZR § 1A03.3 A.1.

accomplished by a Lot Line Adjustment at the time of approval of the Gorsuch Hills Minor Subdivision, without the necessity of a zoning hearing subject to appeal by the Office of People's Counsel. Unfortunately (for Mr. Morrill), at the time of the Gorsuch Hills Minor Subdivision, Mr. Morrill did not own the Morrill Lot. No increase in density would have resulted in such a Lot Line Adjustment; all available density on the Henning property was used during the Minor Subdivision process. The legal effect is identical, the 1.47 ± acres, presently identified as Parcel A, would be occupied by the existing graveyard, a well and a septic reserve area. The Morrill Lot would still have been improved only with a total of one dwelling unit.

Thus, your Petitioner submits that the unwarranted focus of the Office of People's Counsel on the use of the term "non-density" to characterize Parcel A is without import to the relief requested. Were Mr. Morrill attempting to construct homes at a density greater than that which is presently permitted as of right on the Morrill Lot, there would at least be a viable issue for discussion. However, Parcel A will continue to serve the open space purpose for which it was created and can even be planted, as suggested by Mr. Solomon, with paulownia trees, saving and excepting the minimal areas to be occupied by a well casing and a completely underground septic drain field. There was absolutely no credible evidence to even suggest that the granting of the Special Hearing relief necessary for the use of Parcel A as proposed would in any way interfere with the openness of Parcel A or otherwise be detrimental to the public health, safety and/or general welfare. In fact, it is arguable that the use of Parcel A as proposed by Mr. Morrill is far better from both an environmental and public health standpoint than attempting to locate these facilities on an adjoining, already improved lot or developing a shared septic system and water well as suggested by Mr. Solomon.

For all of the foregoing reasons, the decision of the Deputy Zoning Commissioner granting the amendment to the Henning Case and the use of Parcel A as proposed by Mr. Morrill should be affirmed and/or re-granted by this Board in the first instance.

2. The location of the proposed dwelling meets the applicable requirements of the BCZR as to front, side and rear yard setbacks, or in the alternative Petitioner has met his burden for the granting of any necessary variance.

The proposed building envelope as shown on Petitioner's Exhibit No. 1 meets the current setback requirements of BCZR § 1A03.4 B 2. That is, the building envelope as drawn provides that the faces of the proposed dwelling will be not less than 25 feet from all rights-of-way³¹ and all property lines. See BCZR § 1A03.4 B 2 a. As a private road is not applicable, neither West Liberty or Harris Mill Roads are classified as arterial roadways and there are no adjacent RC2 zone lines, reservoir properties or conservancy areas being used for agricultural purposes, BCZR §§ 1A03.4 B 2 b through f are not applicable. Thus, the Deputy Zoning Commissioner for Baltimore County determined correctly that no variance for the proposed dwelling was necessary and dismissed Petitioner's variance request as moot.

On *de novo* appeal, should this Board find that the proposed building envelope and dwelling to be erected therein are governed by the setback requirements of the BCZR area regulations in effect at the time the Morrill Lot was created, a minor modification to the building envelope as shown of Petitioner's Exhibit No. 1 will eliminate the necessity of a variance. As testified to by Mr. Schultz, the proposed building envelope is not the footprint of the proposed dwelling. In fact, Mr.

³¹ As noted on Petitioner's Exhibit No. 1, there are no presently applicable right-of-way for West Liberty Road.

Schultz indicated that the proposed dwelling would be approximately 24 feet deep and 40 feet wide. Therefore, Mr. Schultz testified that the rear line of the building envelope as shown on Petitioner's Exhibit No. 1 could be moved an additional five (5) feet east of the rear property line, thereby increasing the minimum rear yard setback to the 30 feet required by 1955 BCZR § 211.4³². As to the front yard setback, the building envelope as shown is already 25 feet from the front lot line as required by BCZR § 211.2. Mr. Schultz indicated further that by the express incorporation of the front yard averaging provisions of 1955 BCZR § 303.1 into Section 211.2 thereof and based on the location of the existing structure on the immediately adjoining lot, the applicable setback from building line to center line of street is met as shown on Petitioner's Exhibit No. 1. Thus, with the slight modification of the rear line of the building envelope as testified to by Mr. Schultz, the dwelling proposed by Mr. Morrill can be erected without the necessity of a variance to the 1955 BCZR.

Certain County officials consulted by the Petitioner have suggested that the RC-4 setback requirements established by County Council Bill No. 98, 1975 are applicable. Although Petitioner disagrees with this "minority" suggestion, he filed a Petition for Special Hearing to resolve the issue. If this Board were to rule that neither the current setback requirements of the BCZR nor the 1955 BCZR requirements were applicable, then a variance from BCZR § 1A03.4 B as adopted in 1975 is necessary and justified to prevent Mr. Morrill from suffering the practical, undue and unreasonable hardship that would result from his being denied the use of his property for a permitted use.

³² The applicable provisions of the 1955 Baltimore County Zoning Regulations exist in the Record as Petitioner's Exhibit No. 10.

The variances that are necessary from the 1975 RC4 zoning regulations, if the same are found to be applicable, are as follows:

1. Front Yard: 30 feet in lieu of the 100 feet required from the centerline of a street,
2. Side Yard: a left side yard setback of 50 feet in lieu of the 100 feet required from the centerline of the street (Harris Mill Road) and a right side yard setback of 25 feet in lieu of the 50 feet required from a lot line, and
3. Rear Yard: 25 feet in lieu of the 50 feet required from a lot line other than a street line.

As noted above, Mr. Schultz testified extensively, without objection or contradiction, that based on the shape and topography of the Morrill Lot and the fact that it is burdened by the existing alignment of Harris Mill Road, a variance is justified. Mr. Schultz noted carefully that the conditions described as justification for the variance, if necessary, are unique to the Morrill Lot. It is clear from the testimony of Messrs. Morrill and Schultz that Mr. Morrill did not create the Morrill Lot and had no part in establishing the lot lines in 1958.

The intermediate appellate court in this State has made it clear that:

the initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and uniqueness of that piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist.

Cromwell v. Ward, 102 Md. App. 691, 698-699 (1995).

Mr. Schultz opined that there were no other properties in the neighborhood that had the dimensions, site constraints and road encumbrance even similar to the Morrill Lot. Therefore, it is beyond question that the 1975 RC4 setback regulations impact the Morrill Lot more severely because of these unique characteristics. Other properties in the neighborhood are not of the irregular shape and narrowness of the Morrill Lot, are not burdened by being partially bisected by a public

roadway and, therefore, would not suffer a similar hardship or difficulty. Absent such uniqueness of the Morrill Lot, the analysis by this Board would be stopped and the variance denied. *Chesler Haven Beach Partnership v. Board of Appeals for Queen Anne's County*, 103 Md. App. 324, 338 (1995). It is abundantly clear that the hardship to be faced by Mr. Morrill absent the granting of any necessary variance is not self-inflicted, i.e. not the result of any action or inaction by Mr. Morrill.

Finally, Mr. Schultz testified that the factors specified in BCZR §307.1 were met by the facts and circumstances in the instant case. Moreover, Mr. Schultz testified affirmatively that the requirements of *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28 (1974) and *McLean v. Soley*, 270 Md. 208 (1973) were met by the unique circumstances applicable to the Morrill Lot and by the practical difficulty and undue hardship to be faced by Mr. Morrill absent the granting of any necessary variance.

For the foregoing reasons this Board should find that the building envelope for the Morrill Lot as proposed on Petitioner's Exhibit No. 1 meets the current setback requirements of the BCZR or that the modified building envelope as testified to by Mr. Schultz meets the setback requirements of the 1955 BCZR and dismiss the Petitioner's Petition for Variance as moot, or, in the alternative, accept the uncontradicted testimony of Mr. Schultz and the supportive comments from the Office of Planning and Zoning and grant the necessary variance to the RC4 setback requirements as established by County Council Bill No. 98, 1975.


CONCLUSION

Mr. Morrill is not seeking to create density where it does not already exist as a matter of law. Undue concentration on the term "non-density" to describe Parcel A creates a distinction without a meaningful or legal difference in the improvement of the Morrill Lot. Parcel A is not being used for "density" purposes, i.e., its use does not create additional dwelling "units" and, as noted by Mr. Lippincott, it is too small for agricultural purposes. Had the land comprising Parcel A been combined with the Morrill Lot by way of lot line adjustment at the time of the Gorsuch Hills Minor Subdivision, the proposed dwelling would still be located on the Morrill Lot and the proposed well and septic would be located in the RC4 zoned portion of the land presently identified as Parcel A. Moreover, "non-density" parcels, once created can be utilized to support other uses. A means of access to an adjoining use is one of the uses expressly permitted by the current, applicable Code of County Regulations.

The Morrill Lot is unique as compared to other properties in the neighborhood. The proposed dwelling can be erected so as to meet the current setback requirements of the BCZR or the setback requirements that were applicable at the time the lot was created in 1958. If, by some theory, this Board finds the setback regulations for RC4 zones as created by County Council Bill 98, 1975 are applicable, there is uncontradicted, ample evidence of the uniqueness of the Morrill Lot and the practical difficulty and undue hardship that would be suffered by the Petitioner absent the granting of a variance in that situation.

Therefore, the Petitioner respectfully requests that this Board pass an Order granting the

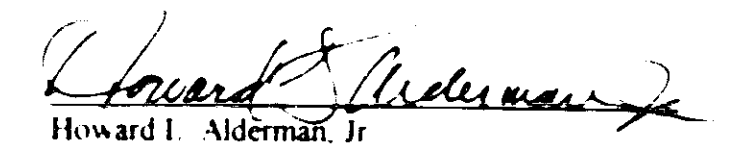
relief necessary for the erection of a single family home on the Morrill Lot with the associated water well and septic reserve area to be located within the RC4 zoned portion of Parcel A.


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Towson, Maryland 21204
(410) 321-0600

Attorneys for Todd Morrill, Petitioner Appellee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of November, 1995, a copy of the foregoing Appellee Petitioner's Post-Hearing Memorandum was mailed, postage prepaid, First Class United States Mail to: Peter Max Zimmerman, People's Counsel and Carole S. Demilio, Deputy People's Counsel for Baltimore County (collectively 1 copy) at: Office of People's Counsel, Room 47 Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204.


Howard I. Alderman, Jr.

BALTIMORE COUNTY, MARYLAND
Inter-Office Correspondence

TO: R. Schuetz DATE: November 16, 1995
L. Stahl
K. Howanski
FROM: Kathi
SUBJECT: Todd Morrill /Cases No. 95-263-SPH; No. 95-264-SPH; and
95-265-A.

The above-referenced case was heard by the Board on October 25, 1995, with memorandums due from counsel on November 15, 1995.

Enclosed for your review are the following documents:

1. Memorandum of People's Counsel for Baltimore County, filed November 14, 1995.
2. Appellee/Petitioner's Post-Hearing Memorandum filed by Howard L. Alderman, Jr., Esquire, on November 15, 1995.

Also enclosed is a copy of the notice of the public deliberation scheduled for Wednesday, December 13, 1995 at 9:00 a.m.

Should you have any questions regarding the above, please call me.

Kathi

Attachments

IN THE MATTER OF BEFORE THE
TODD MORRILL BALTIMORE COUNTY
21300 WEST LIBERTY ROAD BOARD OF APPEALS
Case Nos. 95-263-SPH
95-264-SPH, 95-265-A

MEMORANDUM OF PEOPLE'S COUNSEL

Peter Max Zimmerman, People's Counsel for Baltimore County, and Carole S. Demilio, Deputy People's Counsel, submit this Memorandum, as per request, in lieu of closing argument.

STATEMENT OF FACTS

The Petitioner, Todd Morrill is a real estate developer and broker in Baltimore County. In September, 1994 he purchased a .494 acre parcel zoned RC 4 (Rural Conservation - Watershed Protection). The Petitioner intends to sell the parcel as a residential home site. The parcel was carved out of a larger tract and created by deed dated December 31, 1958. The site had been used as a general store and mill although that use has been abandoned for some time. The site is unimproved, and is known as 21300 West Liberty Road.

It is situated at the corner of Harris Mill Road and West Liberty Road (northeast of Harris Mill and northwest of West Liberty). Little Deer Creek is a significant stream that runs very near, if not through the site, winding into Harford County. There was testimony that Little Deer Creek empties into the Loch Raven Reservoir.

Subsequent to the purchase of the site, Petitioner, through his engineer, requested permission from Zoning Administration and

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Development Management (ZADM) to use a separate off-site parcel for a well and septic system. ZADM replied that the request could not be granted by their office, and noted that this proposed use for the off-site parcel was contrary to the use permitted when the parcel was created in 1993.

In 1993, a 10.78 acre lot was proposed for subdivision by David Henning, the developer/owner (hereinafter referred to as "Henning"), (Case No.93-289-SPH). The lot was split zoned, 5.73 acres zoned RC 2 (Rural Conservation - Agriculture) and 5.05 acres zoned RC 4. The RC 2 portion of the lot contained a dwelling. The lot was farmed. The .494 acre RC 4 parcel in the instant case is a separate lot from the 10.78 acre tract and was never a part of the 1993 subdivision.

The developer in 1993 proposed to create three building lots and a non-density parcel from the 10.78 acre tract as follows:

- (1) Lot 1 with 2.98 acres and the existing house.
- (2) Lot 2 with 2.67 acres, split-zoned 1.88 acres of RC 2 for a future dwelling, and .79 acres of RC 4 designated as non-density.
- (3) Lot 3 with 3.55 acres, split zoned 3.24 acres of RC 4 for a future dwelling, and .31 acres of RC 2 designated as non-density.
- (4) Parcel A with 1.47 acres split zoned .44 acres of RC 2 and 1.03 acres of RC 4. The entire Parcel A was designated as non-density.

The 10.78 acre tract has a maximum density of 3 units (2 for

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the RC 2 portion containing between 2 and 100 acres, (BCZR 1A013B) and 1 for the RC 4 portion of less than 6 acres (BCZR1A03.4B). All the permitted density was utilized in the 1993 subdivision approved by the Deputy Zoning Commissioner on May 25, 1993. (See attached Opinion and Order, marked as People's Counsel Exhibit 1).

The Opinion noted the use of the non-density Parcel A as follows:

"Finally, proposed Parcel A, which contains approximately 1.03 acres zoned RC 4 and .44 acres zoned RC 2, shall be transferred to the Andersons for non-density purposes. As previously stated, the Andersons are desirous of acquiring Parcel A to provide additional land to the rear of their property. There shall be no further subdivision of this lot and the Petitioners shall record a new deed for Parcel A in the Land Records of Baltimore County which references this case and the terms and conditions set forth herein."

In December, 1994, Morrill purchased Lots 2 & 3, and Parcel A from Henning. (Henning never went through with the sale of Parcel A to the adjoining property owner, Anderson, as set forth in the Opinion above. Also, Henning's son purchased Lot 1 and the existing dwelling and resides therein).

Morrill filed three zoning Petitions in January, 1995. He requested:

- (1) Special Hearing relief to locate a well and septic on Parcel A to support development of the .494 acre parcel. (Case 95-264SPH);

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(2) Special Hearing relief to construct a residential dwelling on the .494 acre parcel, as a "lot" existing prior to the creation of the RC zones in Baltimore County, and approval to apply BCZR 1A03.4.B.2 to building setbacks on the site, (Case 95-263-SPH);

(3) Variance relief from setback requirements of BCZR Section 1A03.4.B.4) if the special hearing relief in (2) above is not granted (Case No.95-265-A).

The Deputy Zoning Commissioner granted the Petitions for Special Hearing and dismissed as moot the Variance Petition.

A timely appeal was filed by the Office of People's Counsel.

A de novo hearing was held before the Baltimore County Board of Appeals on October 25, 1995. The Petitioner testified and also presented as witnesses the engineer, Geoffrey C. Schultz, and Jeff Long from the Baltimore County Office of Planning and Zoning. People's Counsel presented Paul Solomon, former head of the environmental planning section of the Office of Planning and Zoning, and former director of the agricultural preservation program of the Department of Environmental Protection and Resource Management for Baltimore County (DEPRM).

Memoranda were requested in lieu of closing arguments.

CAN A WELL AND SEPTIC SYSTEM BE LOCATED ON A DESIGNATED NONDENSITY PARCEL?

The facts and zoning history of the non-density Parcel A are important to the decision in the instant case. The issues in this

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case reach further back and beyond the issues framed by Morrill in his three Petitions heard by the Deputy Zoning Commissioner in March, 1995. It is necessary to look at the subdivision approved in 1993 and the creation of the nondensity parcel in that process.

The 1.47 acre nondensity parcel was created when the purchaser of a single 10.7 acre split-zoned lot attempted to subdivide into residential lots. A request to subdivide split-zoned sites will trigger the application of BCZR 1A00.5, which states as follows:

"1A00.5-Application to tract divided by zone boundary. [Bill No. 98-75]

Whenever a single tract is divided by a zone boundary so that portions of such a tract lie within R.C. zones of different classifications, the total number of dwellings or density units permitted shall apply to each tract individually and for the purpose of these regulations shall be considered as separate parcels. [Bill No. 98. 1975]

This section was enacted in the same legislative Bill No. 98 which created the RC zones in Baltimore County as we know them today. Its purpose is two-fold: the calculation and the application of density to a single rural tract divided by a zone boundary.

The permitted density is calculated as though the property contained within each zoning boundary is a separate lot. In the 1993 subdivision, the zoning line essentially divides the site in half, running from the northwest to the southeast. (See

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Petitioner's Exhibit 2).

A simple application of the density permitted under BCZR and Section A100.5 for the RC 2 portion (5.73 acres) would net two density units, that is, two lots of at least one acre each. A dwelling existed on the RC 2 in 1993, thus one density unit remained.

A simple application of the density permitted under BCZR 1A03.4.B and section A100.5 for the RC 4 portion (5.05 acres) would net one density unit. Thus the developer in 1993 would have a total of three density units on the site, one of which was used by the existing dwelling. The developer sought and received approval for the maximum density on the site. The calculation of density in 1993 appears to comply with the law.

Section A100.5 also requires that the application of the density complies with the calculation. In other words, the dwellings must be located on the portion of the site from which the density originated. In the 1993 subdivision, the two lots or dwellings permitted on the RC 2 must be located exclusively on the RC 2, and the single density unit for the RC 4 must be located exclusively on the RC 4. This second location requirement of Section 1A00.5 is clear from the use of the phrase "the total number of dwellings or density units permitted shall apply to each tract individually" (Emphasis added). The Zoning Manual is consistent in this regard and states, " If RC zoned land under the same ownership is separated by a different RC zone, then the density should be calculated and utilized by each zone parcel."

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(Emphasis added). Compliance with BCZR A100.5 is necessary to assure that a transfer of density does not occur on split-zoned sites. Otherwise a greater density may occur on a portion of the site than would be permitted if the portion existed as a single parcel.

In the case at hand, the 1993 subdivision creating three lots and one parcel did not apply the density to the respective zoned portions of the site. The existing dwelling on Lot 1 lies totally within the RC 2 and appears to comply. The second density unit permitted in the RC 2 should be contained in a lot which is zoned entirely RC 2. It is not, and the new Lot 2 is split-zoned. The third remaining density unit originates from the RC 4 portion and should be contained in a lot which is zoned entirely RC 4. It is not and the new Lot 3 is split-zoned.

The regulation of density in the zoning process has been endorsed by the Maryland Court of Appeals. In Halmar Associates v. Board of County Comm'rs., 260 Md. 292, 272 A2d 6, 15 (1971), the Court stated: "It is well established that zoning to regulate density is a proper exercise of the police power . . . The public health, safety and welfare and density control are reasonably related; but, of course, the means used to control density must themselves be reasonable." (citations omitted).

In 1987, the Court of Appeals upheld a Montgomery County "Agricultural Preservation Plan" whose purpose " was to preserve open space and agricultural land in the upper part of the County by restricting development of the land." West Mont. Ass'n v. MNCPP &

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P Com'n, 309 Md. 183, 187. The Court affirmed the significance of density regulation set forth in Mallmar, supra, as a fundamental zoning principle, "At the outset, we state a basic proposition that is not contested by any of the parties - that the regulation of the density and distribution of population is a part of the zoning power and ordinarily is to be exercised by the District Council" [of Montgomery County], Id. at 194. The Court of Appeals in West Mont. Ass'n. also quoted a zoning treatise, which states, "Intensity of use is said to be a proper element of zoning. Furthermore, it has been authoritatively stated that intensity of land use is a well recognized and valid city concern which relates to both health and safety factors and to proper zoning practice." Id. (Footnotes omitted).

The 1993 subdivision appears contrary to the intent of BCZR 1A00.5, an important density regulation. But in an attempt to make the 1993 subdivision acceptable in the zoning process, the developer Henning created one separate nondensity parcel, Parcel A, and distinct nondensity portions of Lots 2 & 3. The Deputy Zoning Commissioner placed strict restrictions on the nondensity portions of the subdivision. For instance, the nondensity portion of Lot 2 "will have no improvements placed thereon and shall be used for agriculture only." The 1.47 acre Parcel A was restricted as heretofore quoted on page 3 of this Memorandum. These restrictions assured, in any event, that the maximum net density of 3 units would not be exceeded, despite the problematic crossing of zoning boundaries. Under these restricted circumstances, the case did not

warrant an appeal at that time.

Clearly, the nondensity designations of Lots 2 & 3, and the creation of Parcel A as nondensity were integral parts of the 1993 subdivision. The subdivision could not exist without them. An abuse or misuse of Parcel A or portions of Lots 2 & 3 with illegal uses would disturb the integrity of the subdivision and further distort the application of BCZR 1A00.5. Moreover, to allow the use of Parcel A for an accessory use, or as an extension of density, is subversive not only of BCZR 1A00.5 but also of the absolute density limits of BCZR 1A01.3.B, thus in effect allowing 4 density units on the "Henning" subdivision instead of 3. This effect compounds the noncompliance problems with the 1993 subdivision.

The concept of maintaining the integrity of a subdivision was set forth in Marathon Bldgs., Inc. v. Montgomery County Olan. Bd., 246 Md. 187, 227 A2d 755 (1967). In that case, the property owner sought to develop an undivided tract of 9.895 acres for apartment units under the permitted zoning. The buildings were constructed on 6.133 acres of the tract. During the application process to develop the site, the property was rezoned to a lower density multifamily residential zone. The property owner was grandfathered and proceeded with the planned construction. He conveyed the completed buildings to various third parties and after twelve years held title to only the undeveloped portion consisting of 3.762 acres. The owner sold this acreage to the appellant who planned to develop the site. The Planning Board denied the application. The appellant alleged irreparable harm if development were prohibited.

The Circuit Court affirmed the Planning Board's denial and stated: "It is clear that the original owners utilized the 3.762 acres to meet the density requirements under the zoning ordinance for the apartments units which were developed. . . . The Court has found no Maryland authorities, nor has plaintiff cited in its brief, that would afford the plaintiff relief upon the facts which reflect that he has, unfortunately, purchased a \$15,000 "pig in a poke" - 3.72 acres of land upon which he has and is paying a skyrocketing property tax rate and which he cannot develop unless, I think, he is given legislative relief." Id. 757. The Court of Appeals affirmed the Circuit Court. The Appellate Court noted: "The question before this Court was whether the lower court was correct in sustaining the Planning Board's finding that the appellant's land had been previously used by its owners to satisfy the density requirements of the R-30 classification . . . on the ground that the Planning Board's action was neither arbitrary, capricious nor contrary to law. . . . This Court is of the opinion that the holding of the chancellor was correct." Id. . Moreover, the Court refuted the appellant's contention that it is an "innocent purchaser" and that "it should not be responsible for the exhaustion of the area consumed by the density requirements attendant to the development and construction performed on the tract by its predecessor in title." Id. The Court stated that to exclude the 3 acre tract from its integration and use in the prior development is a "complete circumvention of the zoning laws." Id. at 759.

The significance of upholding the spirit and intent of the RC

zones is evident in a Baltimore County zoning case, The Matter Of Steven H. Gudeman, Case No. 88-490-SPH. The Board was unwilling to increase density for a lot divided by a road. The Petitioner's argument that the road in effect created two lots and that density should be calculated separately for each portion was soundly rejected by the Board. The intent of the RC legislation could not be subordinated to the convenience and expediency of the property owner regardless of physical constraints.

In a more recent Board of Appeals decision pending before the Circuit Court, the Board rejected a commercial property owner's attempt to locate his septic system on a off-site residential lot. In The Matter of Long Green and Orville Jones, Case No. 95-341-94-CV10257. In the appeal, the preliminary decisions from the Circuit Court affirm this position. (See also In The Matter Of Harford Joint Venture, Case No. R-94-142, where the property requested reclassification of the RC 5 portion of his split zoned property to construct a septic reserve area to support the commercial use on the BR portion of the lot, since use of the RC 5 to support development on the BR was not permitted).

The use of residentially zoned property to support commercial development is not permitted under the zoning regulations unless authorized by statute. BCZR Section 409.8.B permits parking for a commercial use in a residential zone. The implication is that no other use is permitted unless stated in the Regulations.

The decisions in these cases are consistent with People's Counsel's position in the instant case. As hereinafter explained,

the term "development" would include support systems, such as well, septic, and parking. Development of a commercial lot cannot extend into a residential zone unless authorized by the zoning regulations. Similarly, development of a residential lot cannot extend into a nondensity parcel.

There is no clear definition of "nondensity" found by this Office. The Baltimore County Zoning Regulations do not define nondensity. Webster's dictionary defines "density" as "The number of inhabitants per unit geographic region." "Gross Residential Density" is defined in Anderson's American Law of Zoning, 3rd, as "The number of dwelling units in relation to an area of land actually in use or proposed to be used for residential purposes, excluding public rights-of-way whether exterior or interior, but including interior parking areas and access lanes, sidewalks, parks, playgrounds, common open spaces, etc." (emphasis added). This definition includes adjunct parts to the actual dwelling structure. That is, a dwelling unit includes more than the house itself. Conversely, a nondensity parcel must not contain such adjunct parts.

In addition, a septic system and well would be an "accessory structure" or an "accessory use" as defined in BCZR Section 101, and Section 400. As such, they are a part of development and density. Such accessory uses are not permitted on a designated "nondensity" parcel.

In a relatively recent Board of Appeals decision, In The Matter Of Dennis G. McGee, Case No. 94-42-SPH, density was at

issue. A property owner created and transferred by deed certain parcels from her 14 acre tract prior to the enactment of the RC zones. One such .7 acre RC 2 parcel was transferred to BGE to construct a utility tower. The Petitioner in the case alleged one density unit was attributable to the .7 acre parcel, which he intended to merge with his adjacent site (which admittedly had no density) to construct a home. The Board ruled that no density existed on the .7 acre parcel. Following passage of the RC 2 legislation which established a 1 acre minimum, the Board ruled the .7 acre parcel was no longer a "lot" and therefore, had no density.

The testimony and documents introduced in the People's Counsel's case support these interpretation of the applicable laws and regulations.

The issues and position of this Office were eloquently presented and explained at the hearing by Mr. Paul Solomon. His instrumental role in developing the RC zones in Baltimore County underscores his expert opinion that the proposed development contravenes the clear intent and spirit of the RC legislation. The intent of the RC 2 and RC 4 legislation is to protect agriculture and the watersheds respectively. Only restrained development is permitted; to authorize development on an RC 4 RC 2 site also designated as nondensity is a serious deviation from the purpose of these zones. (See attached excerpts from the applicable Regulations).

Mr. Solomon stated affirmatively that BCZR 1A00.5 applied to the 1993 subdivision. He explained that "nondensity" equates to

"no development." Mr Solomon opined that the use of the nondensity parcel for a well and septic area supports development and is tantamount to development of Parcel A. The Petitioner produced no evidence nor legal principles to refute this logical explanation.

Mr. Solomon also indicated his concern that a decision in favor of the Petitioner in this case would produce adverse and unintended effects throughout the County, as well as at the instant site.

Mr. Solomon described the reasons for the RC 4 designation on both the .494 acre site and the nondensity parcel. He was the only witness at the hearing familiar with Little Deer Creek, and explained its significance to watershed protection in Baltimore County. Moreover, Mr. Solomon articulated acceptable farming uses for the sites. Furthermore, his statement that other RC 4 uses for the .494 acre site were feasible without infringement on the nondensity parcel was unchallenged by the Petitioner.

Mr. Solomon also noted that the Petitioner did not exhaust all septic system options on the .494 acre parcel, nor offer evidence to that effect. The witness suggested alternative septic systems which the Petitioner could attempt on the .494 acre parcel itself. The Petitioner never testified on direct or redirect that he availed himself of these options.

Thus Mr. Solomon was most persuasive in (1) placing the Petitioner's request in the context of the historic development of the RC 2 and RC 4 zones, (2) illustrating the practical application of the purpose and effect of these zones, and (3) interpreting the

zoning regulations consistently with the purposes of the RC 2 and RC 4 legislation. Moreover, Mr. Solomon was able to articulate alternative practical suggestions for use of the .494 acre parcel without contravening the intent of the RC 2 and RC 4 zones.

By letter to the Board, Valleys Planning Council concurred with the interpretation and intent of the applicable RC zones and the nondensity designation as stated by Mr. Solomon. Valleys Planning Council also expressed deep concern for the unfavorable effect this decision may have on other sites in the RC zones throughout the northern County.

Likewise, a concern with the impact of development in the resource sensitive RC 2 and RC 4 zones at this site, was underscored by Wallace Lippincott, Director of Agricultural Preservation for DEPR. His comments are part of the Board's file.

On the other hand, the Petitioner's land planning witness, Jeff Bond, gave no testimony relevant to the issues in the case. His opinion on lot line adjustments is inapplicable to the facts of both the instant case and the 1993 subdivision case. Moreover, he offered no reference to a zoning regulation authorizing such a procedure. The point of fact is that the 1.47 acre parcel was designated nondensity in 1993 for a specific purpose. The Petitioner is now attempting to circumvent that purpose and develop the site.

IS THE .494 ACRE PARCEL A LEGAL BUILDING LOT?

The Petitioner has the burden of proving that the .494 acre RC 4 parcel is a legal building lot. The creation of that parcel

within the applicable zoning regulations requires a careful review of the facts and zoning history of this parcel as well as compliance with the applicable zoning regulations. It is submitted that the Petitioner failed to meet this burden.

The subject site was apparently created from a larger tract by deed in 1958. The Petitioner submitted no evidence of a validly approved subdivision to create this site. At its creation, the site was used for a commercial operation. At certain times, it was rezoned to RC 4 and the commercial use abandoned.

In 1970, Bill #100 established two rural zones in Baltimore County. The most common was R.D.P. (Rural Deferred Planning). (The other was R.S.C. (Rural-Suburban: Conservation). Each had a one acre minimum lot area. In 1975, Bill #98 amended drastically the rural zone system and created the R.C. zones as we know them today, with some minor subsequent modifications. The minimum lot area was increased to two acres for the RC 2 zone and three acres for the RC 4 zone. The minimum lot requirements were subsequently modified but never relinquished. Currently, the RC 2 zone requires a one acre minimum, and an RC 4 lot of less than six acres cannot be subdivided.

In addition, certain height and area requirements for the RC 4 zone are set forth in BCZR 1A03.4. Certain older lots of record are exempted if specific requirements are met under BCZR 1A03.4B 6. Such lots must be approved by the Baltimore County Office of Planning and Zoning. The Petitioner suggested qualification under BCZR 1A03.4B 6 but failed to produce evidence of OPZ approval.

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In his Petitions and at the Board's hearing, the Petitioner sought approval of development rights on the .494 acre parcel under alternative theories, perhaps hoping an accumulation of extraneous information would somehow gain approval by quantity, if not by quality. The efficacy was obscure, at best.

For instance, the Petitioner's engineer admitted that the building envelope as presented would require changes, suggesting that the site plan in its present form is unacceptable, if not illegal. Further, the Petitioner's engineer admitted the current site plan was in violation of provisions of the 1993 approved subdivision plat, which he dismissed as "wrong". The Petitioner's witnesses failed to explain this inconsistency. In addition, under cross-examination, the Petitioner's engineer admitted that more than 25% of the natural vegetation would be destroyed, in violation of BCZR 1A03.4B.3. Also, the Petitioner's witnesses failed to clearly state that less than 10% of the site, including the roadway, would be covered by impermeable surface, as required by BCZR 1A03.4B.3.

Finally, it must be noted that Harris Mill Road bisects the site, which reduces the building area to less than the .494 acres. As noted in the Baltimore County Interoffice Correspondence of the Chief of the Developers Engineering Section, which is part of the Board's file, both West Liberty Road and Harris Mill Road will be improved as 40-foot streets. They are shown as 25-foot streets on Petitioner's Exhibit 1. Thus the .494 acres will be further reduced, resulting in even more overcrowding of the land if the

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Petitions are granted.

This issue of overcrowding was stated in a letter dated October 20, 1995 to the Board by Francis J. Velez, a homeowner in the area who had to be out of town at the time of the hearing. Doctor Velez noted that "this area has been developed to its maximum. . .". He also pointed out the proximity of Deer Creek to the site and the "extensive developments that have threatened the very essence of the community."

In summary, the Petitioner has failed to satisfactorily correlate the history of his site with the applicable zoning regulations. It is unclear whether he can build within the parameters of the applicable height and area restrictions, or even if he has a legal right to build at all on this .494 acre parcel.

Moreover, in order to grant a variance, the Petitioner must comply with Cromwell v. Ward, 102 Md. 691 (1995). The Petitioner has failed to prove that this site is unique compared to other 1/2 acre sites in the RC 4 zone. Nor has the Petitioner established practical difficulty since other uses for the site exist.

The Petitioner's request is an abuse of the zoning process. He is attempting to transform a bargain purchase of an undersized parcel, which may not qualify as a legal building lot, into a profitable situation, at the expense of Parcel A, on which development is prohibited.

The Board must recognize that the Petitioner, a real estate broker and developer, proceeded to settlement without contingencies for zoning approval, a successful percolation test and suitable

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well location. He cannot now claim relief from such an imprudent course by an attempted abuse of the zoning regulations, and a transgression of the spirit and intent of the RC zones. As was stated in Marathon, supra at 755, "[A] Purchaser of land is expected to make intelligent inquiry into land uses permitted and the effect that zoning has produced on property and on tract of which it was once a part, and purchaser's reliance on bare evidence of fee simple title will not afford ground for relief from zoning restrictions."

In summary, the paramount issue in this case is whether the Petitioner can encroach upon the nondensity parcel. Clearly development as proposed by the Petitioner was not permitted in the 1993 Order and Opinion of the Deputy Zoning Commissioner. It is not authorized by the zoning regulations and is inconsistent with the spirit and intent of the RC zones. Obviously, by disregarding the purpose of Baltimore County zoning regulations, the Petitioner is attempting to gain benefits from the .494 acre parcel far beyond the value indicated by the \$3000 purchase price. Such actions cannot be sanctioned by the Board of Appeals and the Petitions must be denied.

Respectfully submitted,

Peter Max Zimmerman

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C. S. Demilio

Carole S. Demilio
Deputy People's Counsel

Certificate of Mailing

The undersigned hereby certifies that a copy of this Memorandum was mailed this 15th day of November, 1995, to Howard Alderman, Esquire, 305 West Chesapeake Avenue, Towson, MD 21204, attorney for Petitioner.

C. S. Demilio

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IN RE: PETITIONS FOR SPECIAL HEARING AND VARIANCE: N.W.S. Liberty Rd., 240' N of c/l of Harris Mill Rd. (21300 West Liberty Road) 7th Election District 7th Councilmanic District
* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case Nos. 95-263-SPH, 95-264-SPH, and 95-265-A
Todd Morrill
Petitioner

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as combined Petitions for Special Hearing and Variance for that property known as 21300 West Liberty Road and Parcel "A" adjacent thereto, located in the vicinity of Gorsuch Mills in northern Baltimore County. The Petitions were filed by the owner of the property, Todd Morrill, through his attorney, Howard L. Alderman, Jr., Esquire. In Case No. 95-263-SPH, the Petitioner seeks approval of the residential use of an existing lot created prior to the adoption of the R.C. zones for one single family dwelling and to determine that the building setback requirements of Section 1A03.4.B.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) are applicable to the subject property, or in the alternative, should this Deputy Zoning Commissioner determine that the previously adopted setback requirements of Section 1A03.4.B.4, per Bill No. 98, 1975, are applicable, consideration of the Petition for Variance in Case No. 95-265-A. In Case No. 95-264-SPH, the Petitioner seeks a modification of the relief granted in prior Case No. 93-289-SPH to permit a well and septic system to be located on Parcel "A", which is a residentially zoned, non-density parcel adjoining 21300 West Liberty Road. Lastly, in the event alternative special hearing relief is granted in Case No. 95-263-SPH, the Petitioner seeks relief, pursuant to Case No. 95-265-A, from Section 1A03.4.B.4 of the B.C.Z.R. to permit a

front building setback of 50 feet in lieu of the required 100 feet from the centerline of a street; to permit a left side yard setback of 50 feet in lieu of the 100 feet required from the centerline of a street; a right side yard setback of 25 feet in lieu of the 50 feet required from a lot line, and a rear yard setback of 25 feet in lieu of the 50 feet required from a lot line other than a street line, for the construction of one single family dwelling on an existing lot of record which was recorded prior to the adoption of the R.C. zones. The subject property and relief sought are more particularly described in the site plans submitted with each Petition, filed and marked into evidence respectively as Petitioner's Exhibits 1.

Appearing at the hearing held on behalf of these Petitions were Todd Morrill, property owner, Howard L. Alderman, Jr., Esquire, attorney for the Petitioner, and Geoffrey Schultz, Professional Engineer with McKee and Associates, Inc., who prepared the site plans submitted with these Petitions. There were no Protestants present.

The properties which are the subject of these requests include a 0.494 acre parcel of land, known as 21300 West Liberty Road, and an adjoining parcel comprised of 1.47 acres, known as Parcel "A" of the subdivision of Gorsuch Hills. Parcel "A" is split zoned R.C. 2 and R.C. 4, while the property at 21300 West Liberty Road is zoned R.C. 4. The Petitioner is desirous of developing the property at 21300 West Liberty Road with a single family dwelling and locating the well and septic reserve area for this dwelling on the adjoining Parcel "A". The property at 21300 West Liberty Road failed the percolation test required for a well and septic system. It should be noted that Parcel "A" was the subject of prior Case

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By JP

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Case No. 93-289-SPH, in which this parcel was approved for a density purposes by the Deputy Zoning Commissioner on May 20, 1993.

At the start of the hearing on this matter, counsel for the Petitioner presented a Motion to dismiss the variance requested pursuant to Case No. 95-265-A, claiming that the dwelling proposed to be constructed at 21300 West Liberty Road meets all of the setback requirements imposed by the B.C.Z.R. and thus no variance is needed. Therefore, Mr. Alderman argued that the requested variance should be dismissed accordingly.

As to the special hearing relief sought by the Petitioner, it was clear from the proffered testimony presented by Mr. Alderman that the property at 21300 West Liberty Road has existed since prior to the establishment of the R.C. 4 zone and that the Petitioner has the right to use the property as a dwelling thereon. Furthermore, as to the alternative relief sought to be granted, namely, to allow the lot on which the Petitioner wishes to construct this dwelling to permit the Petitioner in the process of preparing the adjoining Parcel "A" line the neighboring development of Gorsuch Mills to locate the well and septic reserve area for the proposed dwelling. As noted above, Parcel "A" consists of 1.47 acres and provides more than enough area to locate a well and septic reserve area thereon. Mr. Morrill testified that once the special hearing relief is granted, he intends to finalize the purchase of Parcel "A" and merge same with the 0.494 acre parcel at 21300 West Liberty Road to create one lot of nearly 2 acres. As noted above, Parcel "A" was the subject of prior Case No. 93-289-SPH in which this Deputy Zoning Commissioner allowed this land to exist as a non-density parcel. In the opinion of this Deputy Zoning Commissioner, the proposed use of Parcel "A" for a well and septic reserve area to serve the dwelling at 21300 West Liberty Road will not interfere

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with the openness of Parcel "A" which was the intention of creating a non-density parcel in prior Case No. 93-289-SPH. Therefore, the special hearing relief requested pursuant to Case No. 95-264-SPH shall be granted and Mr. Morrill shall be permitted to use this land for a well and septic reserve area.

Furthermore, I find that the proposed dwelling meets all setback requirements imposed by Section 1A03.4.B.2 of the B.C.Z.R., and as such, the Petition for Variance shall be dismissed as moot.

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship would result if the relief requested in the special hearing were not granted. It has been established that the requirements from which the Petitioner seeks relief would unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the relief requested will not be detrimental to the public health, safety, and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the special hearing relief should be granted and the variances dismissed as moot.

Therefore, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 30th day of March, 1995 that the Petition for Special Hearing in Case No. 95-263-SPH to approve the residential use of an existing lot created prior to the adoption of the B.C.Z.R. for one single family dwelling, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the building setback requirements of Section 1A03.4.B.2 of the Baltimore County Zoning Regulations (B.C.Z.R.)

are applicable to the subject property, and as such, the Petition for Special Hearing in Case No. 95-263-SPH, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Special Hearing in Case No. 95-264-SPH to permit a modification to the relief granted in prior Case No. 93-299-SPH to permit a well and septic system to be located on Parcel "A", an adjoining residentially zoned, non-density parcel, in the location shown on Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restriction:

1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.

IT IS FURTHER ORDERED that the Petition for Variance in Case No. 95-265-A seeking relief from Section 1A03.4.B.4 of the B.C.Z.R. to permit a front building setback of 10 feet in lieu of the required 100 feet from the centerline of a street; to permit a left side yard setback of 50 feet in lieu of the 100 feet required from the centerline of a street; a right side yard setback of 25 feet in lieu of the 50 feet required from a lot line, and a rear yard setback of 25 feet in lieu of the 50 feet required from a lot line other than a street line, for the construction of one single family dwelling on an existing lot of record which was recorded prior to the adoption of the B.C. zones, be and is hereby DISMISSED AS MOOT.

TMK:bjg

Baltimore County Government
Zoning Commissioner
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Levin & Gann
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RE: PETITIONS FOR SPECIAL HEARING AND VARIANCE
190 S. Liberty Road, 141' N of E of Harris Mill Road
(21300 West Liberty Road and Parcel "A" of Gorsuch Hills)
7th Election District - 3rd Councilmanic District
Todd Morrill - Petitioner
Case Nos. 95-263-SPH, 95-264-SPH, and 95-265-A

Dear Mr. Alderman:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petitions for Special Hearing have been granted and the Petition for Variance dismissed as moot in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Zoning Administration and Development Management office at 887-4386.

Very truly yours,

Timothy M. Kotrocco
TIMOTHY M. KOTROCCO
Deputy Zoning Commissioner
for Baltimore County

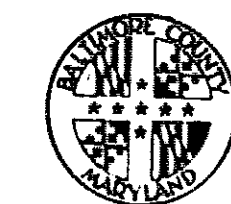
TMK:bjg

cc: Mr. Todd Morrill
1248 Lower Glencoe Road, Sparks, MD 21152

Mr. Geoffrey Schultz
McKee & Associates, Inc., 5 Shawan Road, Hunt Valley, Md. 21030

People's Counsel

File



Petition for Special Hearing to the Zoning Commissioner of Baltimore County

for the property located at 21300 West Liberty Road E.D. 7
which is presently zoned RC-6

This Petition shall be filed with the Office of Zoning Administration & Development Management. The undersigned, legal owner of the property shown in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 200.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve the residential use of an existing lot created prior to the adoption of the RC zones for one single family dwelling and to determine that the building setback requirements of RCZ Section 1A03.4.B.2 are applicable to the subject property, or in the alternative, if the Commissioner determines that the previously adopted setback requirements of RCZ § 1A03.4.B.4 (per Bill No. 98, 1975) are applicable, consideration of the Petition for Variance filed herewith.

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of above Special Hearing advertising, posting, etc. upon filing of this petition, and further agree to and be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contact Petitioner/Owner
Name of Petitioner/Owner
Signature
Address
City
State
Zip Code
Petitioner/Owner
Name of Petitioner/Owner
Signature
Address
City
State
Zip Code
Petitioner/Owner
Name of Petitioner/Owner
Signature
Address
City
State
Zip Code
Petitioner/Owner
Name of Petitioner/Owner
Signature
Address
City
State
Zip Code

RECEIVED
DATE
BY
ITEM # 253

MCKEE & ASSOCIATES, INC.

Engineering - Surveying - Real Estate Development

SHAWAN PLACE, 5 SHAWAN ROAD
HUNT VALLEY, MARYLAND 21030
Telephone: (410) 527-1555
Facsimile: (410) 527-1563

January 17, 1995

ZONING DESCRIPTION PARCEL "A" GORSUCH HILLS SUBDIVISION SEVENTH ELECTION DISTRICT

Beginning at a point which is North 55° 43' 45" West 108.00 feet from the west side of West Liberty Road, which is 33.95 feet wide at a distance of 340 feet, more or less, north of the center line of Harris Mill Road; thence along the eight following bearings and distances: South 38° 02' 46" West 175.85 feet, North 69° 44' 54" West 65.92 feet, North 02° 58' 37" East 132.01 feet, North 21° 20' 19" West 145.27 feet, North 42° 35' 21" West 384.62 feet, North 49° 02' 27" West 172.47 feet, South 52° 42' 24" East 456.26 feet, and South 22° 26' 04" East 158.21 feet to the place of beginning

Also known as Parcel "A" of the "Gorsuch Hills" subdivision as shown on the approved Minor Subdivision Plan No. 94-095 MP and located in the Seventh Election District.



ITEM # 253

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 7th
Posted for: Special Hearing
Petitioner: Todd Morrill
Location of property: 21300 West Liberty Rd., MD
Location of Signs: 1248 Lower Glencoe Rd., Sparks, MD
Remarks:
Posted by: [Signature]
Number of Signs: 1
Date of Posting: 2/14/95
Date of return: 2/14/95

CERTIFICATE OF PUBLICATION

TOWSON, MD. 21152, 1995

THIS IS TO CERTIFY that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 2/14, 1995.

THE JEFFERSONIAN

A. Henrickson
LEGAL AD. - TOWSON

receipt
75-263-SPH
DATE
BY
CASHIER VALIDATION
Please Make Checks Payable to Baltimore County

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 7th
Posted for: Special Hearing
Petitioner: Todd Morrill
Location of property: 21300 West Liberty Rd., MD
Location of Signs: 1248 Lower Glencoe Rd., Sparks, MD
Remarks:
Posted by: [Signature]
Number of Signs: 1
Date of Posting: 2/14/95
Date of return: 2/14/95

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County Zoning Regulations require that notice be given to the general public/neighborhood property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property and placement of a notice in at least one newspaper of general circulation in the County.

This office will ensure that the legal requirements for posting and advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements.

PAYMENT WILL BE MADE AS FOLLOWS:

- Posting fees will be assessed and paid to this office at the time of filing.
 - Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper.
- NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

ARNOLD CABLON, DIRECTOR

For newspaper advertising:

Item No.: 253, 254, 255 (3 items)
Petitioner: Todd Morrill
Location: 21300 West Liberty Rd., Sparks, MD
NAME: Todd Morrill
ADDRESS: 1248 Lower Glencoe Rd., Sparks, MD 21152
PHONE NUMBER: 216-890-33
AJ:ggg

(Revised 04/09/93)

TO: PUTNEY PUBLISHING COMPANY
February 9, 1995 Issue - Jeffersonian

Please forward billing to:

Todd Morrill
1248 Lower Glanville Road
Sparks, MD 21152
296-8903

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204

or
Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 95-263-SPH (Item 253)
21300 W. Liberty Road
NW/4 W. Liberty Road, 208' E of c/l Harris Mill Road
7th Election District - 3rd Councilmanic
Legal Owner(s): Todd Morrill
HEARING: TUESDAY, FEBRUARY 28, 1995 at 10:00 a.m. in Room 118, Old Courthouse.

Special Hearing to approve the residential use of an existing lot created prior to the adoption of R.C. zones for one single family dwelling and to determine that the building setback requirements of BC22 Section 1403.4.8.2 are applicable to the subject property; or in the alternative, if the Commissioner determines that the previously adopted setback requirements of BC22 Section 1403.4.8.4 (per Bill No. 98,1975) are applicable, consideration of the Petition for Variance filed herewith.

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 887-3391.

Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

FEBRUARY 2, 1995

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204

or
Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 95-263-SPH (Item 253)
21300 W. Liberty Road
NW/4 W. Liberty Road, 208' E of c/l Harris Mill Road
7th Election District - 3rd Councilmanic
Legal Owner(s): Todd Morrill
HEARING: TUESDAY, FEBRUARY 28, 1995 at 10:00 a.m. in Room 118, Old Courthouse.

Special Hearing to approve the residential use of an existing lot created prior to the adoption of R.C. zones for one single family dwelling and to determine that the building setback requirements of BC22 Section 1403.4.8.2 are applicable to the subject property; or in the alternative, if the Commissioner determines that the previously adopted setback requirements of BC22 Section 1403.4.8.4 (per Bill No. 98,1975) are applicable, consideration of the Petition for Variance filed herewith.

Arnold Jablon
Director

cc: Todd Morrill
Howard L. Alderman, Jr., Esq.
McKee & Associates, Inc.

NOTES: (1) ZONING SIGN & POST MUST BE RETURNED TO RM. 104, 111 W. CHESAPEAKE AVENUE ON THE HEARING DATE.
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

Printed with Southern Ink
on Recycled Paper

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

July 18, 1995

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 99-79.

TODD MORRILL - Petitioner
NW/4 of W. Liberty Road, 208' E of c/l Harris Mill Road (21300 W. Liberty Road)
7th Election District
3rd Councilmanic District
SPH - Approval of residential use of existing lot created prior to R.C. zones; determine building setbacks
SPH - Modification of relief granted in 93-289-SPH /well & septic
VAR - Building, side & rear yard setbacks

3/30/95 - D.Z.C.'s Order in which Petitions for Special Hearing were GRANTED and Petition for Variance DISMISSED as moot.

ASSIGNED FOR: WEDNESDAY, OCTOBER 25, 1995 at 10:00 a.m.

cc: People's Counsel for Baltimore County Appellant
Howard L. Alderman, Jr., Esquire Counsel for Petitioner
Mr. Todd Morrill Petitioner
Mr. Geoffrey Schultz
McKee & Associates, Inc.
Pat Keller
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr. /PDM
Docket Clerk /PDM
Arnold Jablon, Director /PDM

Kathleen C. Weidenhammer
Administrative Assistant

PLEASE RETURN SIGN AND POST TO ROOM 49 ON DAY OF HEARING.

Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

February 23, 1995

Howard L. Alderman, Jr., Esquire
Levin and Gann
305 West Chesapeake Avenue
Towson, Maryland 21204

RE: Item No.: 253
Case No.: 95-263-SPH
Petitioner: Todd Morrill

Dear Mr. Alderman:

The Zoning Advisory Committee (ZAC), which consists of representatives from Baltimore County approving agencies, has reviewed the plans submitted with the above referenced petition. Said petition was accepted for processing by the Office of Zoning Administration and Development Management (ZADM), Development Control Section on January 20, 1995.

Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties, i.e., zoning commissioner, attorney, petitioner, etc., are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. Only those comments that are informative will be forwarded to you; those that are not informative will be placed in the permanent case file.

If you need further information or have any questions regarding these comments, please do not hesitate to contact the commenting agency or Joyce Watson in the zoning office (887-3391).

Sincerely,

W. Carl Richards, Jr.
W. Carl Richards, Jr.
Zoning Supervisor

WCR/jw
Attachment(s)

Printed with Southern Ink
on Recycled Paper

BALTIMORE COUNTY, MARYLAND INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: Feb. 13, 1995
Zoning Administration & Development Management

FROM: Robert W. Bowling, P.E., Chief
Developers Engineering Section

RE: Zoning Advisory Committee Meeting
for February 13, 1995
Item No. 253

The Developers Engineering Section has reviewed the subject zoning item. West Liberty Road is an existing road, which shall ultimately be improved as a 40-foot street cross-section on a 60-foot right-of-way.

Harris Mill Road is an existing road, which shall ultimately be improved as a 40-foot street cross-section on a 60-foot right-of-way.

In accordance with Bill No. 56-82, filling within a flood plain is prohibited.

Per Topo Sheet NE 38B, dated April 1961, there is an existing building on this lot. Please clarify.

RWB:SW

BALTIMORE COUNTY, MARYLAND INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Zoning Administration & Development Management

FROM: Pat Keller, Director
Office of Planning and Zoning

DATE: February 13, 1995

SUBJECT: 21300 West Liberty Rd.

INFORMATION:

Item Number: 253, 254, and 255

Petitioner: Todd Morrill

Property Size:

Zoning: RC-4

Requested Action: Special Hearing & Variance

Hearing Date: 1/1

SUMMARY OF RECOMMENDATIONS:

Staff has met with the applicant's representatives, Mr. Schultz and Mr. Alderman, to discuss the requested relief. While at first the request appears unusually complex, the applicant essentially desires to develop an underused, previously recorded lot and to locate private utilities on adjacent land, known as Tract "A".

Should there not be a need for a variance and the provisions of Section 304 are met, staff recommends approval of the request since both the subject lot and Tract "A" are owned by the petitioner. It is recommended, however, that a restriction be placed in the order to insure that access to the graveyard is provided.

Prepared by: Jeffery M. Long

Division Chief: Garyl Kins

PK/JL

ITEM253/FORM/XYZJRL

Pg. 1



Maryland Department of Transportation
State Highway Administration

O. James Lighthizer
Secretary
Hal Kassoff
Administrator

Ms. Joyce Watson
Zoning Administration and
Development Management
County Office Building
Room 109
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Baltimore County
Item No.: 253, 254, 255

Dear Ms. Watson:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not effected by any State Highway Administration project.

Please contact Bob Small at 410-333-1350 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

Bob Small
Ronald Burns, Chief
Engineering Access Permits
Division

BS/

My telephone number is

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free
Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

Baltimore County Government
Fire Department



700 East Joppa Road, Suite 901
Towson, MD 21206-5500

(410) 887-4500

TO: Mr. Robert P. Sweeney
Fire Marshal
700 East Joppa Road, Suite 901
Towson, MD 21206-5500

FROM: Mr. Hal Kassoff
Administrator
SHA

SUBJECT: 21300 West Liberty Rd.

DATE: February 13, 1995

RE: Zoning Advisory Committee Meeting
for February 13, 1995
Item No. 253

The Fire Department has reviewed the subject zoning item. West Liberty Road is an existing road, which shall ultimately be improved as a 40-foot street cross-section on a 60-foot right-of-way.

Harris Mill Road is an existing road, which shall ultimately be improved as a 40-foot street cross-section on a 60-foot right-of-way.

In accordance with Bill No. 56-82, filling within a flood plain is prohibited.

Per Topo Sheet NE 38B, dated April 1961, there is an existing building on this lot. Please clarify.

RE: Zoning Advisory Committee Meeting
for February 13, 1995
Item No. 253

RECEIVED
FEB 8 1995

ZADM

REVIEWER: LT. ROBERT P. SWEENEY
Fire Marshal Office, PHONE 887-4501, MD 21206

cc: File

Printed on Recycled Paper

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT
INTER-OFFICE CORRESPONDENCE

TO: Mr. Arnold Jablon, Director
Zoning Administration and
Development Management
February 23, 1995

FROM: J. Lawrence Pilson *JLP/ps*
Development Coordinator, DEPRM

SUBJECT: Zoning Item #253, 254, 255 - Gorsuch Hills Par. A
21300 West Liberty Road
Zoning Advisory Committee Meeting of February 6, 1995

Agricultural Preservation Program

This request has been reviewed for prime and productive and the proposal would be directly detrimental to agricultural resources in the area.

Ground Water Management

Revised site plans are required and a well must be drilled which meets the minimum yield of one gallon per minute prior to approval of a building permit.

JLP:sp

GORSUCH/DEPRM/TXTSBP

RECEIVED
FEB 24 1995

ZADM

MICROFILMED

INTER-OFFICE CORRESPONDENCE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND RESOURCE MANAGEMENT

TO: Zoning Commissioner DATE: February 28, 1995

FROM: Wally Lippincott, Jr., Agricultural
Preservation

Re: Zoning Item # 253, 254, 255 - Gorsuch Hills Par. A
21300 West Liberty Road

I wish to amend the comment that I made regarding this request and provide a brief explanation. I apologize for the lateness of this change and hope that you will consider this comment.

The original comment erroneously said that this proposal would have a "direct" detrimental impact on the agricultural resources of the area. This is incorrect the comment should read, "the proposed request may have an indirect detrimental impact on the agricultural resources of this area."

The point is a concern for the use of nondensity parcels zoned RC 2 to be used for providing septic and well in order to support additional development in a RC 2 or RC 4 zone. There is no direct negative impact on agricultural resources in this case, however, as the existing lot and the proposed additional ground is too small to support agricultural activities. The concern is for supporting additional density and the indirect impact of additional development in the resource sensitive RC 2 and RC 4 zoned areas. These areas were zoned for the protection of agricultural and watershed resources, respectively.

cc: Development Review Section

MICROFILMED

MCKEE & ASSOCIATES, INC.
Engineering - Surveying - Real Estate Development

SHAWAN PLACE 5 SHAWAN ROAD HUNT VALLEY, MARYLAND 21030

Telephone (410) 527-1555
Facsimile (410) 527-1563

October 11, 1994

Mr. Arnold Jablon, Director
Office of Zoning Administration
and Development Management
Baltimore County Courts Office
401 Bosley Avenue
Towson, Maryland 21204

Re: 0.5 Acres; Located North Side of
West Liberty and Harris Mill Roads
D-7; TA #07-16-60055

Dear Mr. Jablon:

We are writing to request an opinion from your office regarding the above listed property. Currently, we are representing the owner of the property who wishes to develop the lot for a single family dwelling. The property is constricted by spatial setback requirements from existing septic systems, property lines, and floodplains to the proposed dwelling, well, and septic areas.

Our client has contacted the adjacent land owner to the north and has made arrangements to purchase "Parcel A" of the Gorsuch Hills subdivision to utilize it for placement of the well to support a dwelling on his lot.

The Gorsuch Hills subdivision was previously the subject of Special Hearing Case #93-289-SPH which designated "Parcel A" as a non-density parcel. We therefore would request an opinion from your office regarding the utilization of "Parcel A" to support a well site for a dwelling on our client's property, and any implications the Zoning Hearing would have on that use.

We also are requesting an opinion on property line setback requirements for the dwelling on this lot. The lot was previously improved by a general store and a mill, of which one's foundation remains along the property lines on West Liberty Road and the property of Norman and Robyn Anderson. Current setback regulations, if enforced, would render the site unbuildable without a variance. The property has been held intact since 1958 and may possibly be subject to previous property line setbacks.

RECEIVED
OCT 13 1994
ZADM

ITEM # 253, 254, 255

Letter to Mr. Arnold Jablon
Re: 0.5 Acres; Located North Side of
West Liberty and Harris Mill Roads
D-7; TA #07-16-60055
October 11, 1994
Page Two

We have enclosed the following for your review, a current tax map, an approved Minor Subdivision Plat of Gorsuch Hills, a copy of the Special Hearing Order for Case #93-289-SPH, topography showing the existing conditions found on-site, the original deed dated 1958 which created the lot, and the required \$40.00 fee. We have also enclosed a copy of an article from a February, 1953 Baltimore Sun Magazine documenting the previous structures existence.

We appreciate your consideration in matter and look forward to hearing from you in the near future.

Very truly yours,
MCKEE & ASSOCIATES, INC.
Guy C. Ward
Guy C. Ward, R.S.

GCW:ajw
Enclosures

Speed
Letter

October 19, 1994

Dear Mr. Ward:

Please be advised that your proposal would require a special hearing to amend zoning case #93-289-SPH since the function of "Parcel A" will be different from what the hearing granted. Secondly, a variance will be required since the proposed building is being established from commercial to residential use with nonconforming setbacks.

Mitchell J. Kellman
Mitchell J. Kellman
Planner II

MJK:scj

ITEM # 253, 254, 255

RE: PETITION FOR SPECIAL HEARING
21300 W. Liberty Road, NW/S W. Liberty Rd.
208' E of c/l Harris Mill Road, 7th
Election Dist., 3rd Councilmanic
District
Todd Morrill
Petitioners
BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY
CASE NO. 95-263-SPH

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County
Carole S. Demilio
CAROLE S. DEMILIO
Deputy People's Counsel
Room 47, Courthouse
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this *14th* day of February, 1995, a copy of the foregoing Entry of Appearance was mailed to Howard L. Alderman, Jr., Esquire, Levin & Gann, 305 W. Chesapeake Avenue, Towson, MD 21204, attorney for Petitioner.

Peter Max Zimmerman
PETER MAX ZIMMERMAN

MICROFILMED



PETER MAX ZIMMERMAN
People's Counsel

Baltimore County, Maryland
OFFICE OF PEOPLE'S COUNSEL

Room 47, Old Courthouse
400 Washington Ave.
Towson, MD 21204

(410) 887-2188

April 27, 1995

Arnold Jablon, Director
Zoning Administration and Development
Management Office
111 W. Chesapeake Avenue
Towson, MD 21204

Re: PETITIONS FOR SPECIAL HEARING
AND ZONING VARIANCE
21300 W. Liberty Road - NW/S W. Liberty
Road, 208' E of c/l Harris Mill Road,
7th Election Dist., 3rd Councilmanic;
AND
PETITION FOR SPECIAL HEARING
Parcel "A" Gorsuch Hills, 108' W of c/l
W. Liberty Road, 340' N of c/l Harris
Mill Road, 7th Elec. Dist., 3rd Council.
TODD MORRILL, Petitioner
Case Nos. 95-263-SPH, 95-264-SPH and
95-265-A

Dear Mr. Jablon:

Please enter an appeal of PEOPLE'S COUNSEL FOR BALTIMORE COUNTY to the County Board of Appeals from the order dated March 30, 1995 of the Baltimore County Deputy Zoning Commissioner in the above-entitled cases.

In this connection, please forward to this office copies of any papers pertinent to the appeal as necessary and appropriate.

Very truly yours,

Peter Max Zimmerman
Peter Max Zimmerman
People's Counsel for Baltimore County
Carole S. Demilio
Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/csf

cc: Howard L. Alderman, Jr., Esquire

RECEIVED
APR 27 1995
ZADM

Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

May 1, 1995

Howard L. Alderman, Jr., Esquire
Levin & Gann
305 W. Chesapeake Avenue
Towson, MD 21204

RE: Petitions for Special Hearing and
Variance
NW/S W. Liberty Road, 208 ft.
E of c/l Harris Mill Road
21300 W. Liberty Road
7th Election District
3rd Councilmanic District
Todd Morrill-Petitioner
Case Nos. 95-263-SPH,
95-264-SPH, and 95-265-A

Dear Mr. Alderman:

Please be advised that appeals of the above-referenced cases were filed in this office on April 27, 1995 by Peter Max Zimmerman, People's Counsel for Baltimore County. All material relative to the cases have been forwarded to the Board of Appeals.

If you have any questions concerning this matter, please do not hesitate to contact Julie A. Winiarski at 887-3353.

Sincerely,
Arnold Jablon
Arnold Jablon

AJ:jaw
cc: Mr. Todd Morrill
Mr. Geoffrey Schultz

Printed with Recycled Ink
on Recycled Paper

MICROFILMED

APPEAL

Petitions for Special Hearing
NW/S W. Liberty Road, 208 Ft. E of c/l Harris Mill Road
21300 W. Liberty Road
7th Election District and 3rd Councilmanic District
Todd Morrill-Petitioner
Case Nos. 95-263-SPH

Petition for Special Hearing

Description of Property

Certificate of Posting

Certificate of Publication

Entry of Appearance of People's Counsel

Zoning Plans Advisory Committee Comments

Letter to Arnold Jablon from Guy W. Ward dated October 11, 1994

Petitioner's Exhibit 1 - Plat to Accompany Zoning Variance and Special Hearing

Deputy Zoning Commissioner's Order dated March 30, 1995 (Granted)

cc: Howard L. Alderman, Jr., Esquire, Levin & Gann, 305 W. Chesapeake Avenue, Towson, MD 21204
Mr. Todd Morrill, 1248 Lower Glencoe Road, Sparks, MD 21152
Mr. Geoffrey Schultz, McKee & Associates, Inc., 5 Shawan Road, Hunt Valley, MD 21030
People's Counsel, M.S. 2010

Request Notification: Patrick Keller, Director, Planning and Zoning
Timothy M. Kotroco, Deputy Zoning Commissioner
Arnold Jablon, Director of ZADM

7/18/95 -Notice of Assignment for hearing scheduled for Wednesday, October 25, 1995 at 10:00 a.m. sent to following:

People's Counsel for Baltimore County
Howard L. Alderman, Jr., Esquire
Mr. Todd Morrill
Mr. Geoffrey Schultz
McKee & Associates, Inc.
Pat Keller
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr. /PDM
Docket Clerk /PDM
Arnold Jablon, Director /PDM

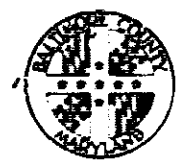
7/31/95 -Letter from Todd Morrill requesting consideration for earlier hearing date, should such become available, due to contract of sale and possible August settlement. Letter hand delivered to office; advised Mr. Morrill that the file would be noted and consideration given to his request in the event an earlier date does become available (presently scheduled for October 25, 1995).

8/15/95 -Letter to Mr. Morrill advising him that, at this time, the Board does not have an earlier date available; however, his letter will be held on file, and upon confirmation of availability of parties, an earlier date assigned, should one become available. (cc: H. Alderman and P. Zimmerman)

10/25/95 -Hearing concluded (95-263-SPH; 95-264-SPH; and 95-265-A). Memorandum due from Counsel by November 15, 1995. To be scheduled for public deliberation some time after receipt of same. (R.K.L.)

Received Memo: Alderman 11/15/95
Zimmerman 11/14/95

11/16/95 -Notice of Deliberation sent to parties; scheduled for Wednesday, December 13, 1995 at 9:00 a.m. (Copies of Memos to R.K.L.)



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

November 16, 1995

NOTICE OF DELIBERATION

Having concluded this case on October 25, 1995, and Memorandum of Counsel filed by November 15, 1995, the County Board of Appeals has scheduled the following date and time for deliberation in the matter of:

TODD MORRILL -PETITIONER/APPELLEE
CASES NO. 95-263-SPH; NO. 95-264-SPH;
AND NO. 95-265-A.

DATE AND TIME : Wednesday, December 13, 1995 at 9:00 a.m.
LOCATION : Room 48, Basement, Old Courthouse

cc: People's Counsel for Baltimore County
Howard L. Alderman, Jr., Esquire
Mr. Todd Morrill
Mr. Geoffrey Schultz
McKee & Associates, Inc.
Pat Keller
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr. /PDM
Docket Clerk /PDM
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

Kathleen C. Bianco
Administrative Assistant

R.K.L. /copied

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on Recycled Paper

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: Todd Morrill -Petitioner
Case No. 95-263-SPH
Case No. 95-264-SPH
Case No. 95-265-A

DATE : December 13, 1995 at 9:00 a.m.

BOARD /PANEL : Robert O. Schuetz (ROS)
Lawrence M. Stahl (LMS)
Kristine K. Howanski (KKH)

SECRETARY : Kathleen C. Bianco
Administrative Assistant

Among those present at the deliberation were Howard L. Alderman, Jr., Esquire, on behalf of Petitioners; and Peter Max Zimmerman, People's Counsel for Baltimore County, and Carol S. Denilio, Deputy People's Counsel, Appellant.

PURPOSE --to deliberate issues and matter of petition presented to the Board; testimony and evidence taken at hearing of October 25, 1995. Written Opinion and Order to be issued by the Board.

ROS: Good morning, everyone. We are here to deliberate Case No. 95-263-SPH; Case No. 95-264-SPH; and Case No. 95-265-A, the Todd Morrill Property. The purpose of today's convening is to comply with the open meetings law as it applies to the Board of Appeals and what is going to be discussed this morning is going to be the issues considered by the members of the Board, but does not represent the official record. The official record will be the Order and Opinion that will come subsequent to this proceeding.

In chambers, we discussed that I would go first. I have to say that this is a situation that I find myself in an unusual position. Unusual in several respects. On a personal level, I generally come out here with a pretty fair direction, almost to the word, in what I want to say, when I come out here and discuss with colleagues. Generally I'm able to do that shooting from the hip. I believe that that is more in the spirit of the open deliberations. And there's going to be some of that today. But I did take a number of notes relative to this case -- leads to several questions that I hope to discuss. I believe that part of the issue is density in this particular matter. We have an undersized lot - R.C. 4; an adjoining parcel is split-zoned and the question is -- can a

Deliberation /Todd Morrill -Petitioner
Case No. 95-263-SPH; Case No. 95-264-SPH; and Case No. 95-265-A

Petitioner use Parcel A for purposes of development on adjoining lot of record to support residential use? And the issue as an accessory was the question of what constitutes accessory use and whether or not a septic reserve area can be on the adjoining property.

This will I guess give you a clue at what I'm looking at. Density has been established; following that procedure, we have no additional density as a result of that development. But converse to that is the fact of reduced density in the area. I believe that the current zoning applies in the area, and we have testimony from Mr. Schultz that development could occur as a matter of right but for lot size. We had issues of septic reserve area on existing lot; did not perk. Had to locate on adjoining property; perfectly normal sequence of events seeking use of property. However, situation where we have less than one acre; we've got a question of whether or not Section 304 applies. We had the testimony of Mr. Schultz -- on re-cross -- the lot did not exist prior to 1955, but contends that 304 applies today; here's where we get into the interesting part of the case.

Section 304.1(a) indicates that such lot shall have been duly recorded by deed or in approved subdivision prior to 1955; but we have situation here -- on its face you would say it fails. However, the lot conformed to the zoning regulations when it was created. And therefore we get to a question, which I do not believe was argued here, one that Larry Schmidt and I have battled over -- can 304 be varied under 307? What's muddled the waters frankly is the testimony of Mr. Schultz -- excellent witness -- raised number of good issues. Mr. Schultz indicated that the Petitioner -- that there is a willingness to record. Section 304.1(c) speaks to the issue of adjoining land, where the owner of the land does not own sufficient adjoining land to comply, etc. We have exactly that, but we don't necessarily have where the recording has not taken place. In absence of recording, can we assume the continued ownership of Parcel A together with subject site, or should we turn to testimony of Mr. Schultz and say recording should have occurred prior to filing? Keeping in mind, of course, that density is at the heart of the issue -- truly have not made up my mind in this matter; would like to have the question answered by my colleagues. In my view, this is one of those cases in the Board's purview that points to a hole in the wall, if you will. Petitioner has piece of property; able to develop as a matter of right; but as consequence of circumstances, may not be able to because of the ownership rights on an adjacent piece of land. That is nonsensical.

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Deliberation /Todd Morrill -Petitioner
Case No. 95-263-SPH; Case No. 95-264-SPH; and Case No. 95-265-A

LMS: Let me just say for the record -- we are here under the open deliberations rules. I've been practicing almost 25 years, and I find it's a difficult process at best. In a case like this, it makes it even more difficult because, frankly, when it's a complicated issue, triers of fact should really be able to ask stupid questions of each other; sometimes more difficult to do than at other times. I make my usual comments that our brethren in the Circuit Court should only have to do what they have mandated we must do.

My question to you -- give me scenario on re-recording; if follow dotted line -- if they recorded and if they did and if they did not -- and define "record."

ROS: To combine lots; to re-record; per testimony of Mr. Schultz -- develop as matter of right; as minor subdivisions which might go to the DRC; I would imagine DRC would have to determine; I don't know.

LMS: That would be R.C. 4 portion.

ROS: He develops as a matter of right; wherever septic field occurs on property; regulations indicate that septic field -- reserve area -- has to be in same zone. The case probably does not even come here. I think they are asking us to make a call as to what really applies -- without having to go the route of re-recording. What happens if we grant it? We allow him to build; at this point, I'm inclined to do just that. Question -- what happens if you do this; what is disposition of adjoining property? Asking for call under special hearing. Has pretty far-reaching effect; what is effect on similar properties? In this case we have a situation where Parcel A -- lot is unusable. The real issue is what is going to happen to that property if it were used.

LMS: I have no answer either yet; thoughts occur today. What effect will this have 2 years or 6 months from now? Does it make difference? Every decision has an effect on what comes later. In the context of a special hearing -- if we determine based on these particular facts and circumstances -- that we allow or don't allow that it's really going to have as far reaching effect --

KKH: This concern is more directed to density; what is the

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Deliberation /Todd Morrill -Petitioner
Case No. 95-263-SPH; Case No. 95-264-SPH; and Case No. 95-265-A

ramification of what we do; what is long-term implication for that?

ROS: In this particular case -- density has already been established. I believe that if we find as People's Counsel would have us do -- the converse is that we would reduce density in the area. That is not within the purview of this Board.

KKH: I'm not that concerned about any far-reaching aspects because the County Council has already said what it wants in terms of zoning. They are free to stay with that or change that. Farmers complain when change is necessary; reduces value of land. Changes can still be made, but may be a price.

LMS: I was thinking, given all different statutes and holes that may exist -- we may be taking step back from it and trying not to simplify it. Comments made in one of the briefs that everybody going through definitions of density. As we take density to mean.

RECESS FOR TELEPHONE CALL; reconvened.

LMS: I was talking about trying to step back; try to simplify issues. As we are talking about density and defining density, people per unit in some manner, shape or form; is what petitioner is requesting going to change density that he already has; is it going to alter it, bring any more development than would otherwise have been applicable? If we allow this, are we increasing density simply by utilizing portion of A to provide accommodation to what is already R.C. 4?

I'm not convinced that we are changing anything if we allow them to use, or Petitioner to use that additional property. I also ask myself the question -- in broad general terms -- is the use of A for something underground, is that a "use of some sort" that causes us a problem; does it muddy the waters, simplify waters? It seems to me that although there are lots and cases -- about bootstrapping commercial -- I understand that -- they even allow parking under some circumstances which I guess is more of a use but almost temporary use -- does not change density of either if the properties; still have commercial property, if you use residential to provide parking -- some cases say it's okay; not changing commercial density. In a way, I'm concurring if utilizing on a residential purpose

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Deliberation /Todd Morrill -Petitioner
Case No. 95-263-SPH; Case No. 95-264-SPH; and Case No. 95-265-A

to allow permitted zoning to continue without changing zoning of Parcel A; do not believe septic and well really changes nondensity.

KKH: Are we talking about density when we use nondensity lot to service another lot? In Zoning Commissioner's Policy Manual, 1A004B -- in there it does appear to construe use of lots as a non-density related activity; referring to sale, transfer of small parcels in (1) -- R.C. zoned parcels too small to meet lot size...may be permitted.

Then it gets into something Bob is talking about -- let's say we don't have legal problem with this density issue -- did that jump through the right hoops? In R.C. 2 zone, parcel could possibly be transferred; correct number of lots.

LMS: And interestingly enough, it does not increase density.

KKH: Believe that's true; appears to contemplate special hearing to assess nondensity transfers. On other hand, I have to acknowledge there could be some use of non-density land that would be so intense as to go against the objective of the regulations. Our job is not to say this use. So intense it's contrary to purpose; our job is to say -- does it change density. If not, we have no reasons to interfere with it. Back to 304 -- otherwise you are in a situation where you have someone with undersized lot bootstrapping other provisions.

ROS: I think that is consistent -- your assessment is consistent with my view of the intention of 304.1c; owner does not own sufficient land to comply with area requirements; seeking a way to obtain proper use.

LMS: Without changing density.

ROS: So ends are preserved; appropriate for that area. I think that the theory is consistently applied; what you do -- in my view -- having heard the answers to my questions -- I would say I would grant the special hearing; I would find as offered by Mr. Schultz -- that 304 applies; that a variance from 304.1 is necessary in that the letter of the law states that the lot shall have been duly recorded by deed or subdivision prior to March 1, 1955, when in fact this was created later, but was

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Deliberation /Todd Morrill -Petitioner
Case No. 95-263-SPH; Case No. 95-264-SPH; and Case No. 95-265-A

not consequence at that time. To find contrary to County Council would be confiscatory; we would be reducing density and devaluing parcel A to zero.

KKH: I did not find the testimony of uses for Parcel A persuasive. It is practical difficulty.

LMS: Listening to him talk about various ways of doing it led me to conclusion -- what they are doing probably makes most sense. Question -- would we have no problem as for instant Parcel A which was purchased by Petitioner later on; if he did not own Parcel A, had R.C. 4 lot that did not perk -- no question that he could not develop that parcel. Assuming he did not have availability of land, could do nothing with R.C. 4. The fact that he was able to purchase land -- as long as nature does not change particularly, I don't think it changes anything. But another way, he should be harmed because the particular facts of this enabled Petitioner to buy adjacent piece of property and zoning does match. Why should he not be allowed to do it?

ROS: From what I'm hearing, am I to assume that we concur finding that we should be granting?

LMS: Yes. I'm coming around to it. No compelling reason why he should not be allowed to do it.

KKH: I'm in the same position at this point; I was troubled still by the first question; but it's clear -- testimony at least persuasive; could be done a number of different ways, but I think we are persuaded that it's not a density issue. That's not what's being indicated by doing this. I want to make sure that when we look at variances, we don't just run right over them.

KKH: We are not in a position where we have to consider a variance.

ROS: I actually believe they meet 304.1.

LMS: Meets setback requirements.

ROS: Different variance; question of whether you can vary 304. I

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Deliberation /Todd Morrill -Petitioner
Case No. 95-263-SPH; Case No. 95-264-SPH; and Case No. 95-265-A

think I sat on a case - granted variance from 304, but that's not before us this morning. I would say that I believe it meets 304 because of the history of the property.

Closing statement by ROS: I think we are in agreement. You should look for opinion and order. Any petition should be taken from the date of that Order and not necessarily from today's date. Thank you very kindly.

Respectfully submitted,

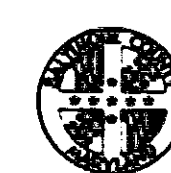
Kathleen C. Bianco
Administrative Assistant

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Permits & Development Management
DATE: September 27, 1996
FROM: Charlotte E. Radcliffe
County Board of Appeals
SUBJECT: Closed Files: Case Nos.
95-263-SPH, 95-264-SPH and 95-265-A
TODD MORRILL - Petitioner
7th E, 3rd C

As no further appeals have been taken regarding the subject case, we are hereby closing the files and returning same to you herewith.

Attachment (Case File No. 95-263-SPH, 95-264-SPH and 95-265-A)



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

August 15, 1995

Mr. Todd Morrill
1248 Lower Glencoe Road
Sparks, MD 21152

RE: Case No. 95-263-SPH; Case No. 95-264-SPH;
and Case No. 95-265-A /Todd Morrill -Petitioner

Dear Mr. Morrill:

The Board is in receipt of your recent correspondence in which you request consideration of an earlier hearing date for the subject matter, currently scheduled for hearing on October 25, 1995.

At this time the Board has no earlier date on its docket to which this case could be assigned. However, we will keep your letter on file in the event an appropriate date becomes available, at which time we would confirm availability of all parties.

Very truly yours,

Kathleen C. Weidenhammer
Administrative Assistant

cc: Howard L. Alderman, Jr., Esquire
Peter Max Zimmerman
People's Counsel for Baltimore County

BALTIMORE OFFICE
MERCANTILE BANK & TRUST BUILDING
2 HOPKINS PLAZA
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BALTIMORE, MARYLAND 21201
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TELECOPIER 410-625-9090

LAW OFFICES
LEVIN & GANN
A PROFESSIONAL ASSOCIATION
305 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
410-321-0600
TELECOPIER 410-296-2801

ELLIS LEVIN (1993-1996)

HOWARD L. ALDERMAN, JR.

November 15, 1995

VIA HAND DELIVERY

Robert O. Schuetz, Chairman
County Board of Appeals for Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

RE: Todd Morrill, Petitioner/Appellee
Petitions for Special Hearing & Variance
21300 West Liberty Road
Case Nos. 95-263-SPH, 95-264-SPH & 95-265-A
Post-Hearing Memorandum

Dear Chairman Schuetz:

On behalf of my client, Mr. Todd Morrill, I am pleased to provide to the Board the enclosed original and three (3) copies of the Appellee's Post-Hearing Memorandum in the above-referenced cases as directed by the Board. Under copy of this letter I am providing copies to the Office of People's Counsel and Messrs. Morrill and Schultz.

I would respectfully request that the Board convene an "open deliberation" session in these cases as soon as is practicable and convenient based on the Board's schedule. Should you or the other members of the Board need any additional information in this regard, please contact me at your convenience.

Very truly yours,

Howard L. Alderman, Jr.

HLA/gk

Enclosures (4)

c (w/enc.): Mr. Todd L. Morrill
Mr. Geoffrey C. Schultz
Office of People's Counsel for Baltimore County

21 NOV 1995

BALTIMORE OFFICE
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TOWSON, MARYLAND 21204
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TELECOPIER 410-296-2801

ELLIS LEVIN (1993-1996)

HOWARD L. ALDERMAN, JR.

February 16, 1995

Timothy M. Kotroco, Deputy Zoning Commissioner
Baltimore County Zoning Commissioner's Office
Old Court House
Towson, Maryland 21204

Re: Case Nos. 95-263-SPH, 95-264-SPH, 95-265-A
Rescheduling of Hearing Time

Dear Commissioner Kotroco:

I spoke with Betty in your office earlier this week regarding the above-referenced cases. All of the cases listed pertain to the same property located at 21300 West Liberty Road and are scheduled for hearing on Tuesday, February 28, 1995 at 10:00 in room 118 of the Old Court House. I advised Betty that I am scheduled to be in the Circuit Court for Baltimore County at 9:30 that morning.

The Circuit Court hearing should be relatively quick, although as you know, you never can tell. The hearing involves oral argument only and there is no opposition on the other side. In any event, I inquired as to whether or not the above-referenced cases could be delayed until 11:00 on the same date. Betty conferred with you and indicated that you would have no problem holding the hearing at that time.

As of this writing, I am not aware of any opposition to the requested zoning relief in this case. Obviously, if I learn of any opposition between now and the time of the hearing I will advise any such persons of the rescheduled time for the hearing and provide you with a copy of that notification. Thank you for your courtesy in rescheduling these hearings.

Very truly yours,

Howard L. Alderman, Jr.

HLA/HF

cc: Mr. Todd L. Morrill
Mr. Geoffrey Schultz

FRANCIS J. VELEZ, M.D., F.A.C.S.

9915 HANFORD ROAD
BALTIMORE, MD 21234
865-0044

2 COLGATE DRIVE, STE. NR
FOREST HILL, MD 21050
838-4118

October 20, 1995

County Board of Appeals
Baltimore County
Old Court House Room 49
400 Washington Avenue
Towson, MD 21204

RE: Todd Morrill 95-263, 95-265, 95-265

Dear Board of Appeals,

It has come to my attention that Mr. Morrill intends to build yet another house above West Liberty and Harris Mill Road. It is my understanding that he intends to purchase an additional small lot, which is non-density, to further enhance his profits by being able to sell yet another home in this rural community. This immediate lot not only encompasses a very old grave yard, but is closely located to Deer Creek, a pristine, fresh water run-off in Northern Baltimore County.

Not only has this area been developed to its maximum, but the Morrills' have recently won permits to develop farm land, only one mile north, on Harris Mill Road.

I am sorry that I could not attend the hearing in person, but previous obligations have prohibited me doing so. If given the opportunity, I would be more than happy to testify in person. I purchased my Harris Mill farm five years ago with the intention of preserving its original nature. Since that time, extensive developments have threatened the very essence of this community.

Sincerely,

Francis J. Velez, M.D., F.A.C.S.
FJV/mp

THE VALLEYS
PLANNING COUNCIL, INC.

212 Washington Avenue
P.O. Box 5402
Towson, Maryland 21285-5402
410-337-6877
410-296-5409 (FAX)

October 20, 1995

Mr. Robert O. Schuetz
County Board of Appeals
Old Court House, Room 49
Towson, MD 21204

Re: Todd Morrill Lot (21300 West Liberty
Road -- 95-263 SPH, 95-264-SPH, 95-265-A)

Dear Mr. Schuetz:

This case involves the placement of a septic field for a lot at 21300 West Liberty Road on an adjoining "non-density" parcel. The Valleys Planning Council opposes this use strongly.

21300 West Liberty Road is a legal lot of record. Nonetheless, it is, in fact, unable to support a dwelling, since no area has been found for a septic field on it. As it stands, it represents no more than open space. [This is confirmed, I believe, by the low purchase price - only \$3000, according to the Land Records.]

The contiguous "non-density" parcel was so designated as a condition for approval of an adjacent subdivision. Such a parcel, which, by County ruling, cannot support any density, should not be used to make this lot buildable. Use of the parcel in this way amounts to using a non-density parcel to create density.

Mr. Kotroco has pointed out that the "openness" of the non-density parcel will be retained. But the immediately adjoining parcel at 21300 West Liberty will now be built on, though it would have remained open otherwise. Thus the "openness" of the neighborhood will, in fact, decrease.

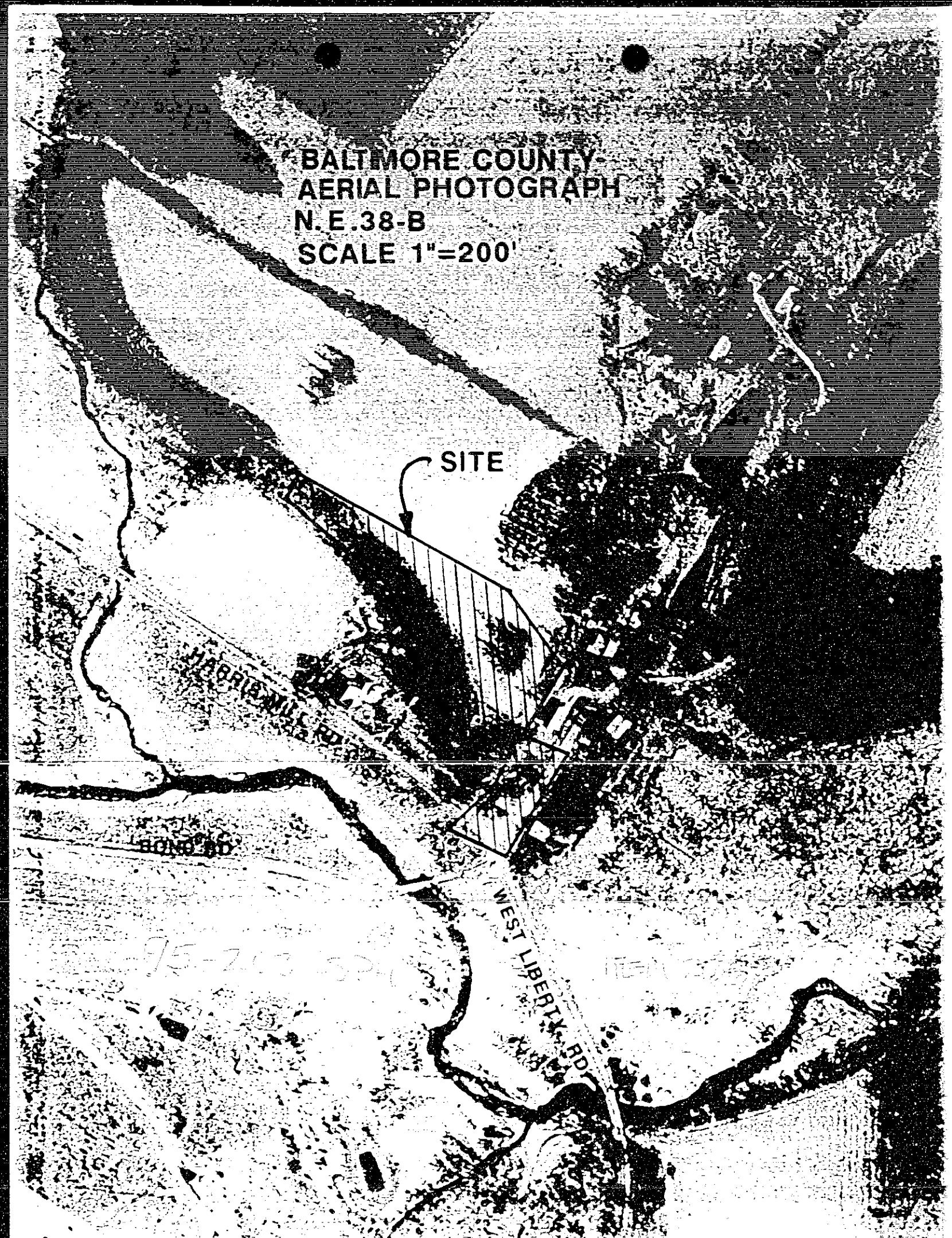
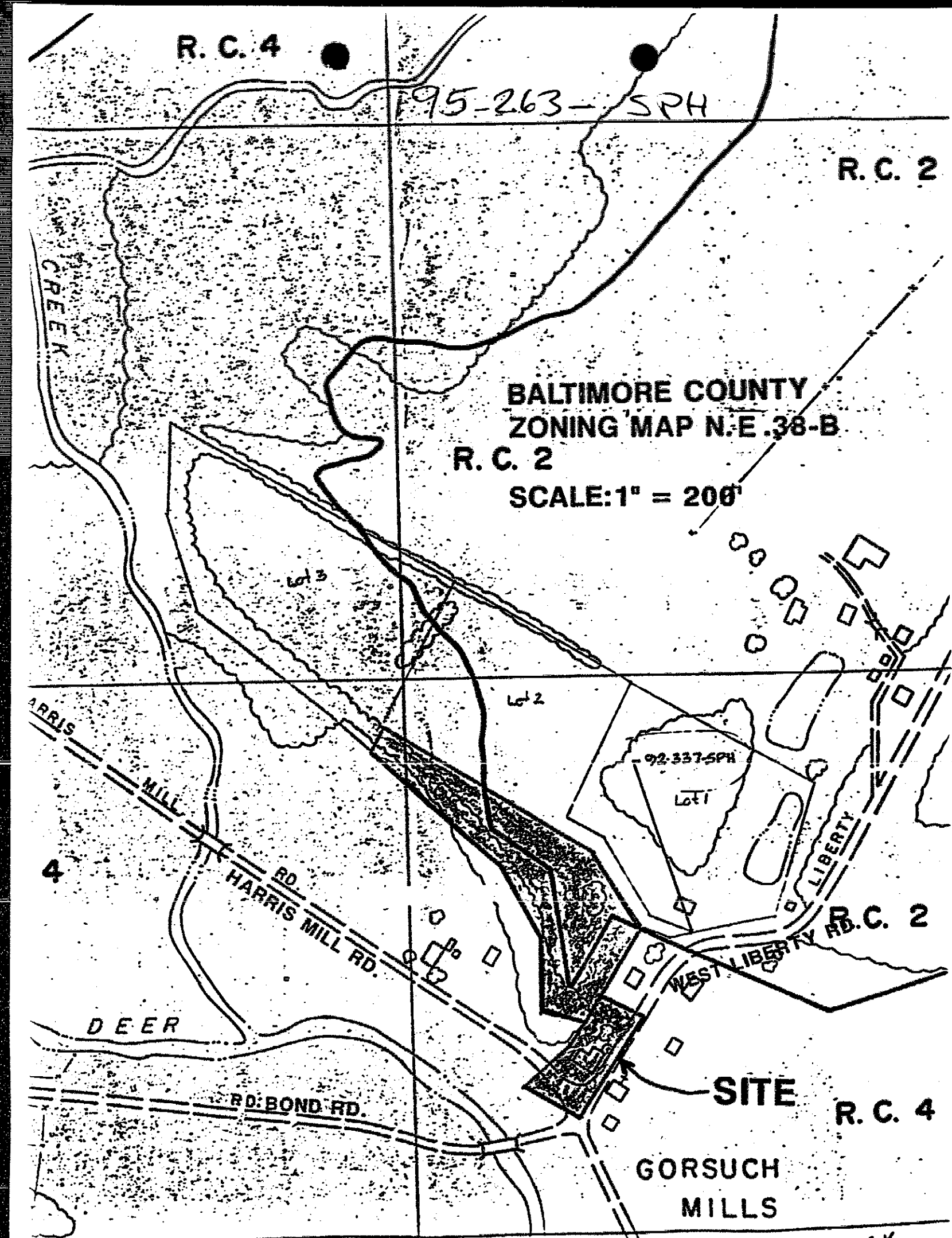
I am personally aware of many undersized, substandard lots in agricultural and reservoir protection areas which may become developable if this interpretation of "non-density" is allowed. These will create areas of development at an intensity much greater than that allowed by the present Resource Conservation zoning. Certainly, this result

would be incompatible with the intent of the legislation creating the R.C.2 and R.C.4 zones, which refers repeatedly to the "preservation" of natural and agricultural resources by discouraging "unsuitable types or levels of development".

Sincerely,

John Bernst
John Bernst
Executive Director

cc: Hon. T. Bryan McIntire
Peter Max Zimmermann, Esq.



ST-2636

THIS DEED, Made this 7th day of December, in the year One Thousand Nine Hundred and Ninety Four, by and between DAVID W. HENNING and RICHARD W. HENNING, parties of the first part, Grantors; and TODD L. MORRILL, party of the second part, Grantee.

THE actual consideration paid or to be paid is \$78,500.00.

WITNESSETH that in consideration of the sum of SEVENTY-EIGHT THOUSAND FIVE HUNDRED AND 00/100THS DOLLARS (\$78,500.00) and other valuable considerations, the receipt whereof is hereby acknowledged, the parties of the first part do grant and convey to the said party of the second part, his personal representatives and assigns, forever, in fee simple, all those lots of ground situate in Baltimore County, in the State of Maryland, and described as follows, that is to say:

FOR LEGAL DESCRIPTION SEE ATTACHED EXHIBITS "A", "B", "C" AND "D"

BEING the same lots of ground described in a Deed dated November 27, 1993 and recorded among the Land Records of Baltimore County in Liber 340 No. 899, folio 340 was granted and conveyed by Charles Howard Bush by Ronald Maurice Thompson, his Attorney-in-Fact unto David W. Henning and Richard W. Henning, the within Grantors.

TOGETHER with the buildings and improvements thereon; and the rights, alleys, ways, waters, privileges, appurtenances and advantages to the same belonging or in anywise appertaining.

TO HAVE AND TO HOLD the said described lot of ground and premises, unto and to the use of the said party of the second part, his personal representatives and assigns, forever, in fee simple.

AND the said Grantors covenant to warrant specially the property hereby granted and conveyed, and to execute such further assurances of said land as may be requisite.

WHENEVER used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

WITNESS the hands and seals of the said grantors:

WITNESS:

DAVID W. HENNING (Seal)
RICHARD W. HENNING (Seal)

ADDITIONAL TRANSFER TAX
AMOUNT
STAMPED DATE
COUNT

10934/365

PETITIONER'S EXHIBIT 3

LIBER 3399 PAGE 121

THIS DEED, Made this 1st day of October,

in the year one thousand nine hundred and seventy-three, by and between HUGH L. POE and LILLIAN M. POE, his wife, and DORIS WILLIAM KEMMY and ELLEN OLITA KEMMY, his wife, all of Baltimore County, State of Maryland, of the first part, and ROBERT A. KELLY, Sr. and SALLY PRICE MICHAEL of Baltimore County, State of Maryland, of the second part.

WITNESSETH that in consideration of the sum of Five (\$5.00) Dollars and other good and valuable considerations, the receipt whereof is hereby acknowledged,

the said first parties

do hereby grant and convey unto the said second parties, as joint tenants, and not as tenants in common

their heirs and assigns,

in fee simple, all that lot lot(s) of ground, situate, lying and being in the 7th Election District of Baltimore County

State of Maryland, and described as follows, that is to say:-

Beginning for the same at a point in the center of West Liberty Road at the NW corner of the second line of a lot described in a deed from Albert W. Sites and wife to Edward C. Sites and wife dated December 10, 1958 and recorded among the Land Records of Baltimore County in Liber W.J.R. No. 3460, folio 57; thence reversing said second line and running North 52 degrees West 94 feet to the end thereof; thence binding on land of Earl Deaps and running South 37 degrees West 100.5 feet to a stone; thence South 51 degrees West 115 feet, more or less, to the center of Harris Hill Road; thence South 52 degrees East 110 feet binding on or about the center of said road to an iron pin, and thence running North 35 degrees East binding on or about the center of West Liberty Road a distance of 208 feet, more or less, to the point of beginning. Containing 0.494 of an acre, more or less.

BEING the same property which by deed dated August 15, 1966 and recorded among the Land Records of Baltimore County in Liber O.P.C. No. 4658, folio 243, was conveyed by David P. Hill and Eva C. Hill, his wife, unto the said Hugh L. Poe and Lillian M. Poe, his wife, The said

PETITIONER'S EXHIBIT 5

PETITIONER'S EXHIBIT 6

This Deed, Made this 1st day of August,

in the year one thousand nine hundred and sixty-six, by and between DAVID P. HILL and EVA C. HILL, his wife,

of Baltimore County,

in the State of Maryland, of the first part, and HUGH L. POE and LILLIAN M. POE, his wife,

of the second part.

WITNESSETH that in consideration of the sum of Five Dollars and other good and valuable considerations, the receipt whereof is hereby acknowledged,

the said first parties

do grant and convey unto the said second parties, as tenants by the entireties, their heirs and assigns, in fee simple, all that lot of the ground, situate, lying and being in the 7th Election District of Baltimore County, aforesaid, and described as follows, that is to say:-

Beginning for the same at a point in the center of West Liberty Road at the end of the second line of a lot described in a deed from Albert W. Sites and wife to Edward C. Sites and wife dated December 10, 1958 and recorded among the Land Records of Baltimore County in Liber W.J.R. No. 3460, folio 57; thence reversing said second line and running North 52 degrees West 94 feet to the end thereof; thence binding on land of Earl Deaps and running South 37 degrees West 100.5 feet to a stone; thence South 51 degrees West 115 feet, more or less, to the center of Harris Hill Road; thence South 52 degrees East 110 feet binding on or about the center of said road to an iron pin, and thence running North 35 degrees East binding on or about the center of West Liberty Road a distance of 208 feet, more or less, to the point of beginning. Containing 0.494 of an acre, more or less.

BEING the same property which by deed dated December 11, 1958 and recorded among the Land Records of Baltimore County in Liber W.J.R. No. 3470, folio 254, was conveyed by Albert W. Sites and wife to the within named grantors.

PETITIONER'S EXHIBIT 6

LIBER 3470 PAGE 254

PETITIONER'S EXHIBIT 7

THIS DEED, Made this 31st day of December, 1958, by ALBERT W. SITES and ELSIE V. SITES, his wife, parties of the first part, Grantors, to DAVID P. HILL and EVA C. HILL, his wife, parties of the second part, Grantees, of Baltimore County, State of Maryland.

WITNESSETH that in consideration of Five Dollars and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said first parties do hereby grant and convey unto the said second parties, as tenants by the entireties, their assigns, the survivor of them and the heirs and assigns of such survivor, in fee simple, all that lot of ground situate in the Seventh Election District of Baltimore County, Maryland, described as follows:

BEGINNING for the same at a point in the center of West Liberty Road at the end of the second line of a lot described in a deed from Albert W. Sites and wife to Edward C. Sites and wife dated December 10, 1958 and recorded among the Land Records of Baltimore County in Liber W.J.R. No. 3460 folio 57; thence reversing said second line and running North 52 degrees West 94 feet to the end thereof; thence binding on land of Earl Deaps and running South 37 degrees West 100.5 feet to a stone; thence South 51 degrees West 115 feet more or less to the center of Harris Hill Road; thence South 52 degrees East 110 feet binding on or about the center of said road to an iron pin, and thence running North 35 degrees East binding on or about the center of West Liberty Road a distance of 208 feet, more or less, to the point of beginning.

BEING part of the land which by a deed dated September 20, 1958 and recorded among the Land Records of Baltimore County in Liber G.L.B. No. 3418 folio 437 was conveyed by William E. Brooks and wife to the within named grantors.

TOGETHER with the buildings and improvements thereon and all the rights and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the above described lot of ground and premises unto and to the proper use and benefit of the second parties, as tenants by the entireties, their assigns, the survivor of them and the heirs and assigns of such survivor, in fee simple.

PETITIONER'S EXHIBIT 7

010801.225

ST-3439

THIS DEED, Made this 9th day of September, in the year One Thousand Nine Hundred and Ninety Four, by and between SALLY PRICE MICHAEL, party of the first part, Grantor; and TODD MORRILL, party of the second part, Grantee.

THE actual consideration paid or to be paid is \$3,000.00.

WITNESSETH that in consideration of the sum of THREE THOUSAND AND 00/100THS DOLLARS (\$3,000.00) and other valuable considerations, the receipt whereof is hereby acknowledged, the party of the first part does grant and convey to the said party of the second part, his personal representatives and assigns, forever, in fee simple, all that lot of ground situate in Baltimore County, in the State of Maryland, and described as follows, that is to say:

BEGINNING for the same at a point in the center of West Liberty Road at the end of the second line of a lot described in a deed from Albert W. Sites and wife to Edward C. Sites and wife dated December 10, 1958 and recorded among the Land Records of Baltimore County in Liber W.J.R. No. 3460, folio 57; thence reversing said second line and running North 52 degrees West 94 feet to the end thereof; thence binding on land of Earl Deaps and running South 37 degrees West 100.5 feet to a stone; thence South 51 degrees West 115 feet, more or less, to the center of Harris Hill Road; thence South 52 degrees East 110 feet binding on or about the center of said road to an iron pin, and thence running North 35 degrees East binding on or about the center of West Liberty Road a distance of 208 feet, more or less, to the point of beginning. Containing 0.494 of an acre, more or less.

BEING the same lot of ground described in a deed dated October 1, 1972 and recorded among the Land Records of Baltimore County in Liber No. 3399, folio 121 was granted and conveyed by Hugh L. Poe and Lillian M. Poe, his wife, to Robert A. Kelly, Sr. and Sally Price Michael, his wife, unto Robert A. Kelly, Sr. and Sally Price Michael, the within Grantors. The said Robert A. Kelly, Sr. having departed this life on or about September 20, 1993.

TOGETHER with the buildings and improvements thereon and the rights, alleys, ways, waters, privileges, appurtenances and advantages to the same belonging or in anywise appertaining.

TO HAVE AND TO HOLD the said described lot of ground and premises, unto and to the use of the said party of the second part, his personal representatives and assigns, forever, in fee simple.

AND the said Grantors covenant to warrant specially the property hereby granted and conveyed, and to execute such further assurances of said land as may be requisite.

WHENEVER used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

WITNESS the hands and seals of the said grantors:

WITNESS:

DAVID P. HILL (Seal)
EVA C. HILL (Seal)

ADDITIONAL TRANSFER TAX
AMOUNT
STAMPED DATE
COUNT

24 10-13-94

PETITIONER'S EXHIBIT 4

PETITIONER'S EXHIBIT

IN RE: Petition for Special Hearing before the
W/6 West Liberty Road, 320' NE
of the c/l of Harris Mill Road
(21304 and 21308 W. Liberty Road)
7th Election District
3rd Councilmanic District
Richard W. Henning, et al
Petitioners

DEPUTY ZONING COMMISSIONER
OF BALTIMORE
Case No. 93-285

MAY 23 1993

ZADM

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as a Petition for Special Hearing filed by the owners of the subject property, Richard W. Henning and his son, David W. Henning. The Petition, as filed, requests approval to subdivide R.C. 4 zoned land with a gross area of less than 6 acres, into more than two parcels and to create two non-density parcels of less than 1 acre each in an R.C. 2 zone, as more particularly described on Petitioner's Exhibit 1.

Appearing on behalf of the Petition were Richard Walter Henning, one of the property owners, and Robert R. Wilson, Registered Land Surveyor. Dorothy D. Cromwell appeared and testified as a Protester.

Testimony indicated that the subject property, known as 21308 West Liberty Road, consists of 10.78 acres, more or less, split zoned R.C. 4 and R.C. 2, and is improved with a single family dwelling, two accessory sheds, and a graveyard. All existing improvements are located on the R.C. 2 zoned portion of the site which consists of approximately 5.73 acres, more or less. The R.C. 4 zoned portion of the site contains approximately 5.05 acres, more or less, and is unimproved. The Petitioners purchased the subject property in 1990 at which time, David Henning moved into the dwelling thereon. The Petitioners rented the surrounding acreage to a farmer for agricultural purposes, but ceased the farming operation earlier

BALTIMORE COUNTY ZONING REGULATIONS

ARTICLE 1A--RESOURCE CONSERVATION ZONES¹ (Bill No. 98, 1975.)
Section 1A00--GENERAL PROVISIONS: ALL R.C. CLASSIFICATIONS
(Bill No. 98, 1975.)

→ 1A00.1--Findings. It is found:

- that development in the rural areas of Baltimore County has in recent years been taking place at an increasing rate; (Bill No. 98, 1975.)
- that this development has occurred without the framework of a land use plan or other planning components; (Bill No. 98, 1975.)
- that due to this and other factors, this development has formed very undesirable land use patterns; (Bill No. 98, 1975.)
- that in general, these patterns are, or can be described as, urban sprawl; (Bill No. 98-75.)
- that a significant amount of urban sprawl development is occurring as linear development along the various highways of the rural areas of the County, as tracts of land immediately fronting along highways are "lotted off"; the utility of the road system is being impaired and future improvements will be frustrated if this process continues; (Bill No. 98, 1975.)
- that it has been established that this development carries with it an extremely high cost to the County in a number of respects including: (Bill No. 98, 1975.)
 - the cost of servicing this pattern of development; (Bill No. 98, 1975.)
 - the cost with respect to its consumption and use of prime agricultural land, critical watershed areas, mineral extractive sites, as well as of other important natural resource areas; (Bill No. 98, 1975.)
 - the cost of future development opportunities due to the fact that viable, rational alternatives will be lost totally or comprised significantly by the present form of development; (Bill No. 98, 1975.)

R. 10 ZONE

per cent of the lots may have an area less than 10,000 square feet (see Section 304).

208.2--Front Yard--For dwellings, the front building line shall be not less than 30 feet from the front lot line and not less than 55 feet from the center line of the street, except as specified in Section 303.1, for other principal buildings, 50 feet from the front lot line and not less than 75 feet from the center line of the street, except as specified in Section 303.1.

208.3--Side Yards--For dwellings, 10 feet wide for one side yard and not less than 25 feet for the sum of both, except that for a corner lot the building line along the side street shall be not less than 30 feet from the side lot line and not less than 55 feet from the center line of the street, for other principal buildings, 20 feet wide except that for a corner lot the building line along the side street shall be not less than 35 feet from the side lot line and not less than 60 feet from the center line of the street.

208.4--Rear Yard--30 feet deep.

R. 4 Zone--Residence, One and Two-Family

Section 209--USE REGULATIONS

The following uses only are permitted:

209.1--Uses permitted and as limited in R. 40 Zone.

209.2--Two family dwellings, as defined in Section 211.1.

209.3--Special Exceptions: Same as R. 10 Zone, except sanitary landfills and trailer parks which are not permitted (see Sections 270 and 502).

Section 210--HEIGHT REGULATIONS:

Same as R. 40 Zone.

Section 211--AREA REGULATIONS

Minimum requirements, except as provided in ARTICLE 3, shall be as follows:

211.1--Lot Area and Width. Each one-family dwelling and each other principal non-residential building hereafter erected shall be located on a lot having an area of not less than 6,000 square feet and a width at the front building line of not less than 55 feet; each two-family dwelling hereafter erected shall be located on a lot having an area of not less than

R. 6 ZONE

10,000 square feet and a width at the front building line of not less than 80 feet for a duplex dwelling and 90 feet for the pair of lots occupied by a semi-detached dwelling (see Section 304).

211.2--Front Yard--For dwellings, the front building line shall be not less than 25 feet from the front lot line and not less than 50 feet from the center line of the street, except as specified in Section 303.1, for other principal buildings, 40 feet from the front lot line and not less than 65 feet from the center line of the street, except as specified in Section 303.1.

211.3--Side Yards--For one-family dwellings, 8 feet wide for one side yard and not less than 20 feet for the sum of both, except that for a corner lot the building line along the side street shall be not less than 25 feet from the side lot line and not less than 50 feet from the center line of the side street; for two-family dwellings, side yards shall be as provided in Sections 214.1 and 214.3, for other principal buildings, same as in Section 208.3.

211.4--Rear Yard--30 feet deep.

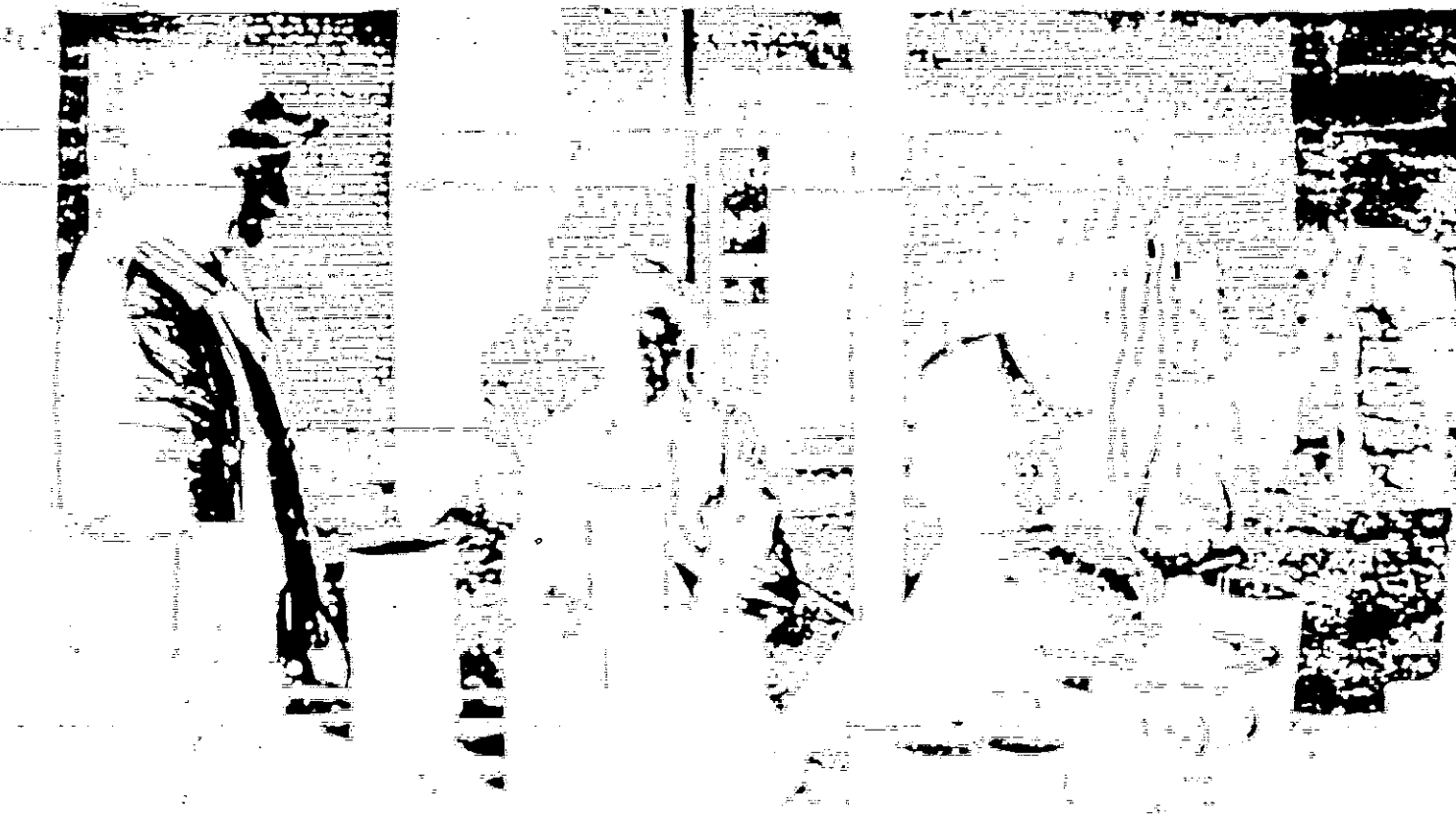
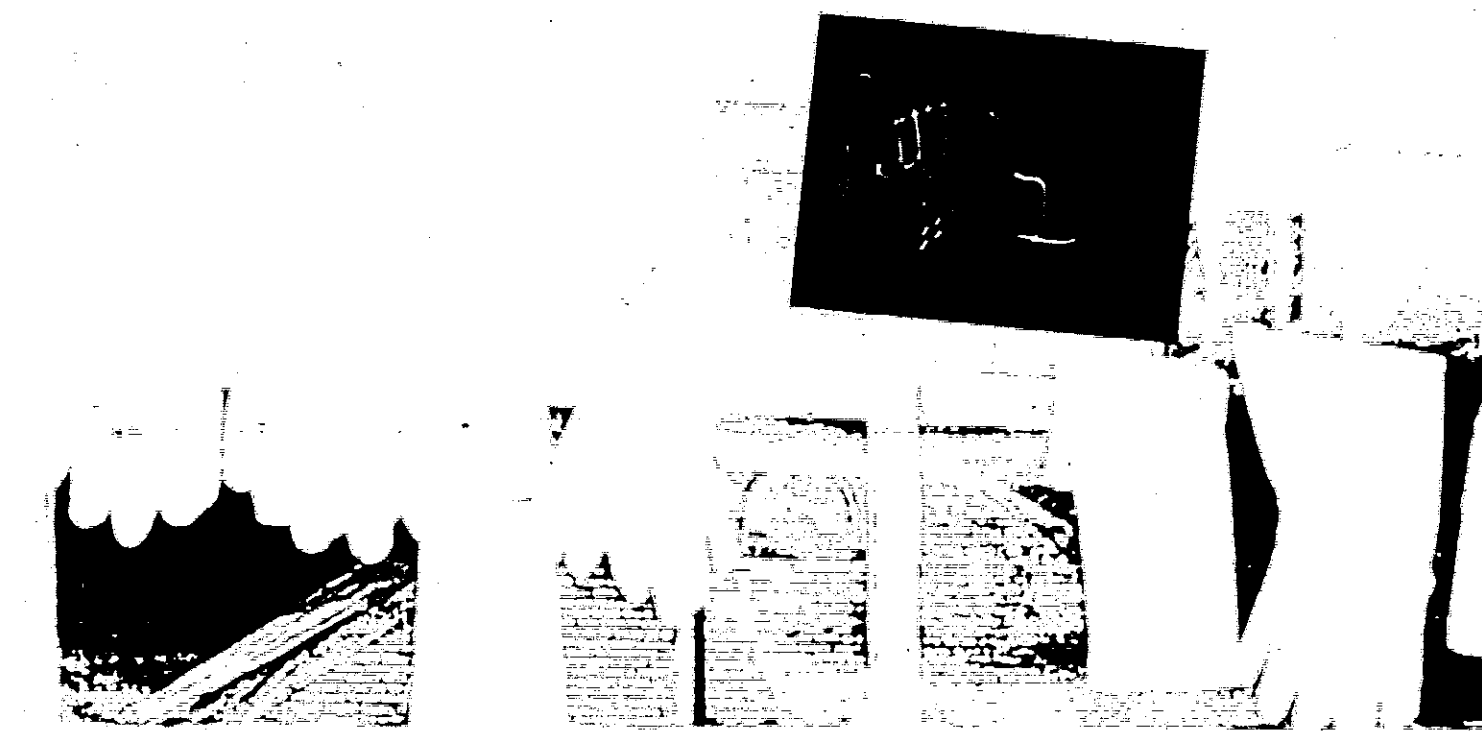


MAGAZIN

BALTIMORE, MD.

PLYMOUTH, VT.

Peter



Country Store

Wholesale Country Store and Plym. Wholesaler does in house of the country chain at Greenwich, Conn. 06030. Sanitary in

BALTIMORE COUNTY, MARYLAND INTER OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: Feb. 19, 1994
Zoning Administration and Development Management

FROM: Robert W. Bowling, P.E., Chief
Developers Engineering Section

RE: Zoning Advisory Committee Meeting
for February 10, 1994
Item No. 215

The Developers Engineering Section has reviewed the subject zoning item. West Liberty Road is an existing road, which shall ultimately be improved as a 40-foot street cross-section on a 60-foot right-of-way.

Harris Mill Road is an existing road, which shall ultimately be improved as a 40-foot street cross-section on a 60-foot right-of-way.

In accordance with Bill No. 98-85, filling within a flood plain is prohibited.

Per Topo Sheet NE 385, dated April 1961, there is an existing building on this lot. Please clarify

RWB:aw

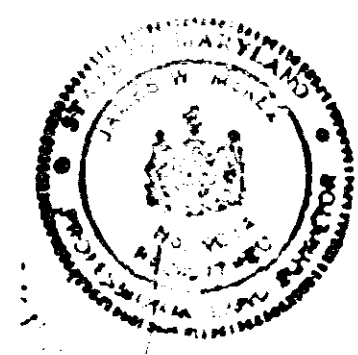
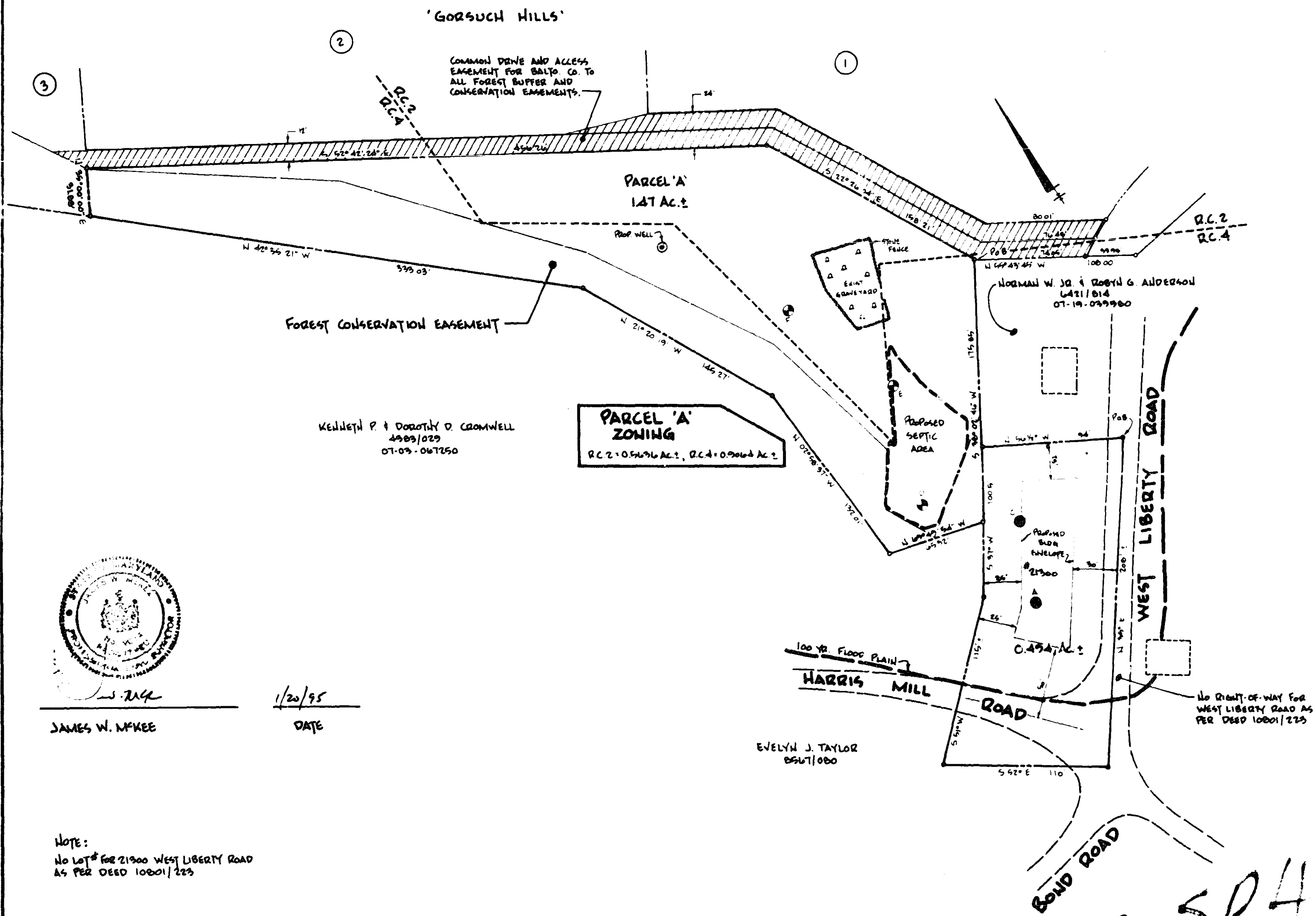
Plot #11

Att #1

1. ACCOMPANY PETITION FOR ZONING ☒ VARIANCE ☒ SPECIAL

PROPERTY ADDRESS 21300 WEST LIBERTY ROAD
 SUBDIVISION NAME GORSUCH HILLS 94-095-MP
 PLAT BOOK - FOLD - SECTION -

OWNER TODD MORRILL DEED: 10801/223



JAMES W. MCKEE

1/20/95
 DATE

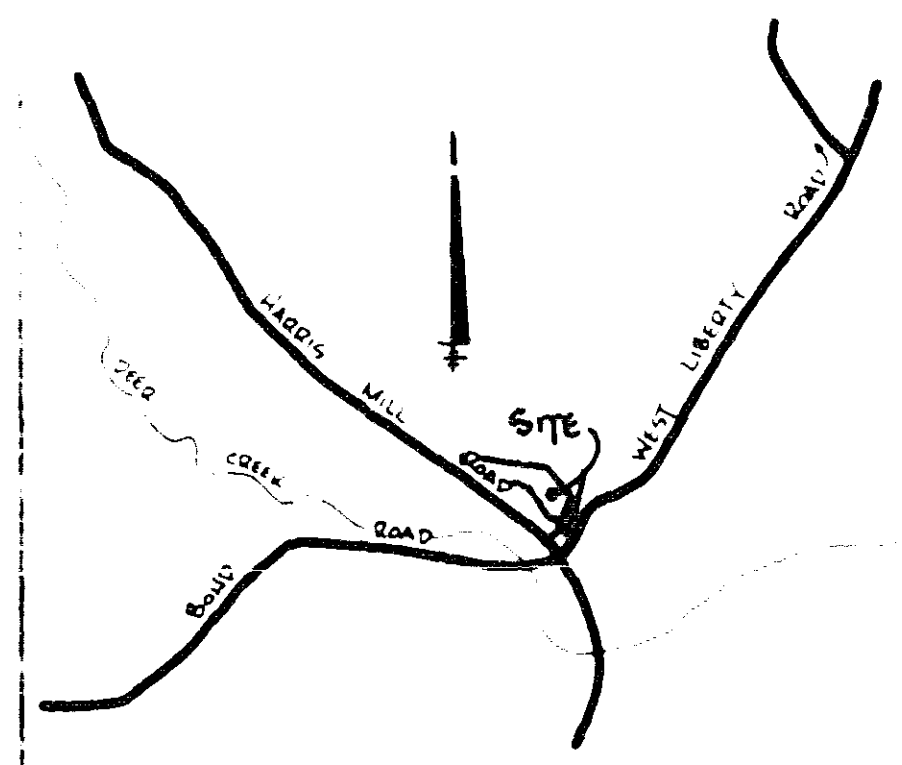
NOTE:
 No Lot # for 21300 West Liberty Road
 as per Deed 10801/223

DATE: JANUARY 12, 1995

PREPARED BY **MCKEE & ASSOCIATES, INC.**
 5 SILVERMAN ROAD HUNT VALLEY, MD
 21030
 (410) 527-1555

SCALE OF DRAWING 1" = 50'

95-263-5PA
 ITEM # 253



VICINITY MAP

LOCATION

SECTION 3

ELECTION DISTRICT 7

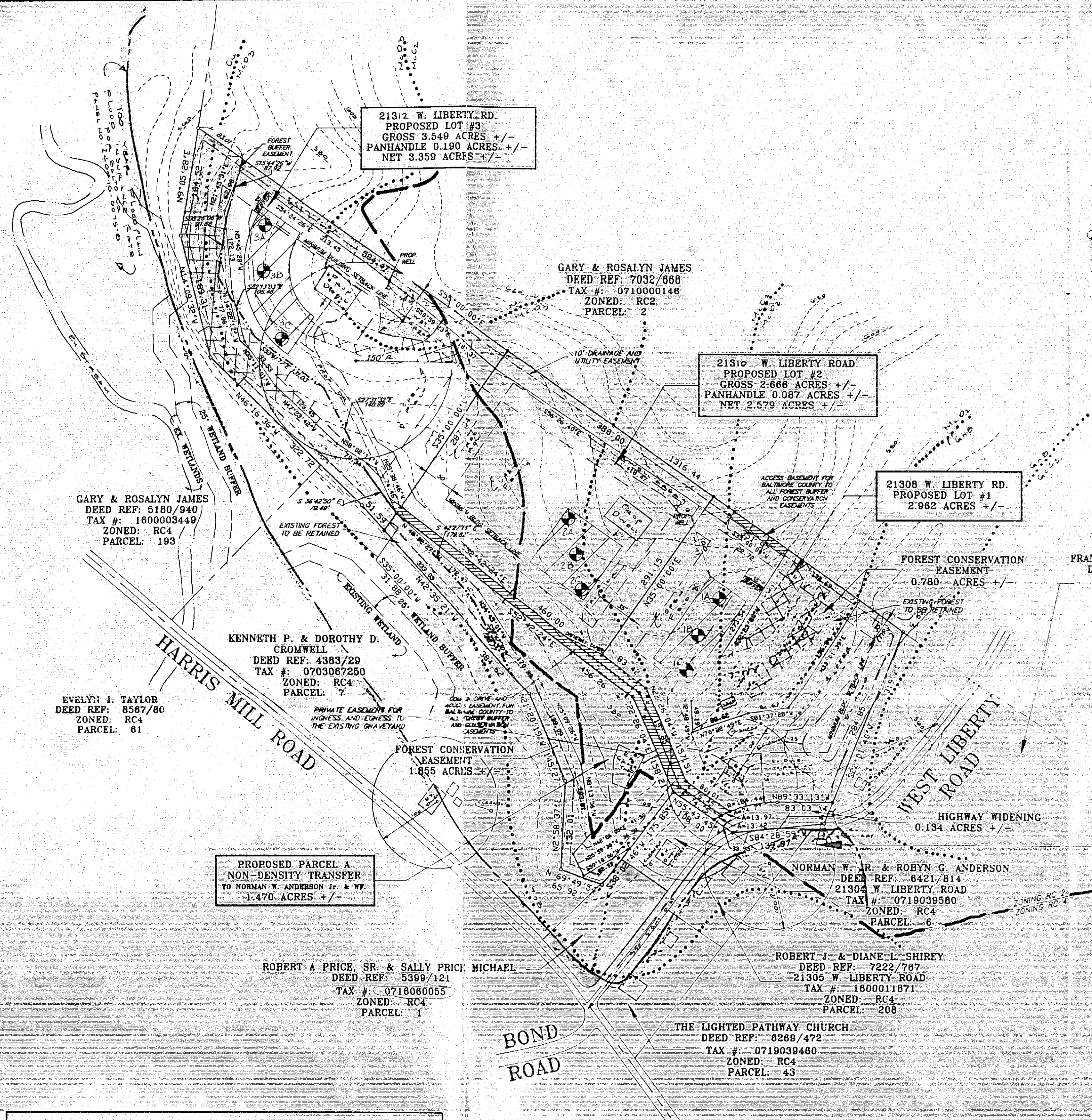
200' WIDE MAP NE 308

ZONING RC.2 & RC.4
 821900 0.494 AC ± 21,510 ±
 LOT #12 PARCEL 'A' 1.47 AC ± 64,093 ±

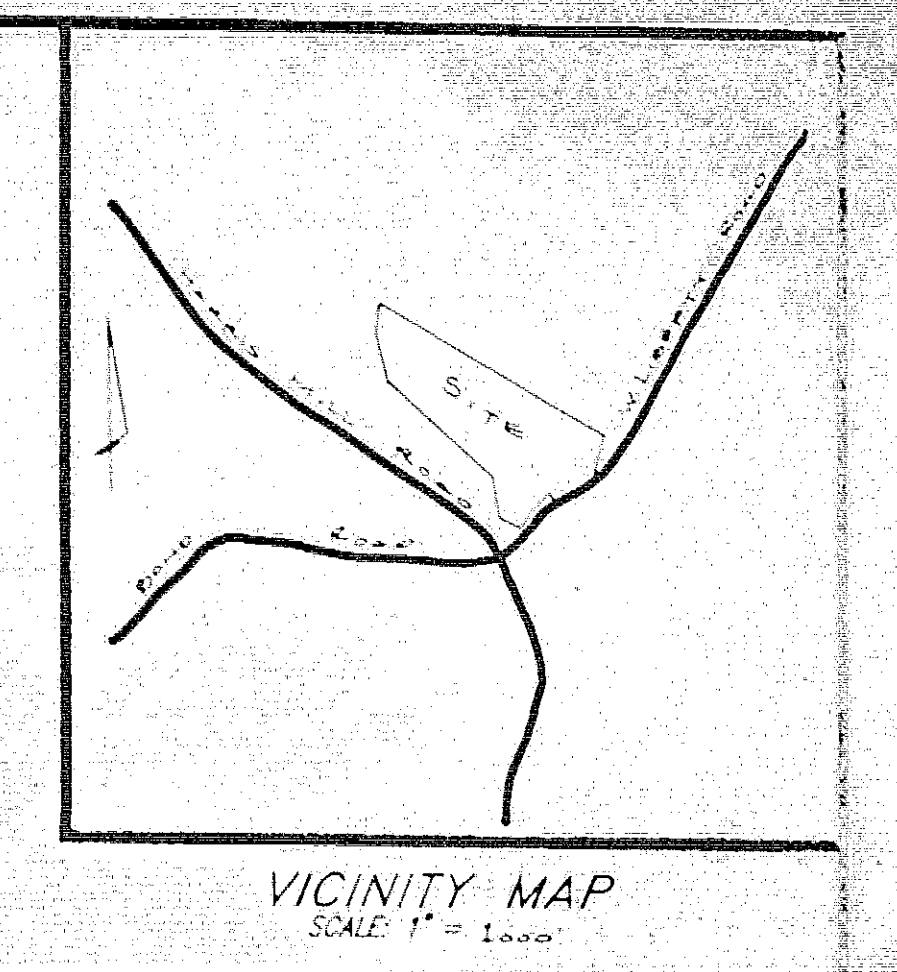
CHESAPEAKE BALTO. CO. YES
 PRIOR ZONING MAP NO YES
 CASE # 93-209-SPH

ZONING OFFICE USE ONLY

PETITIONER'S
 FILE #

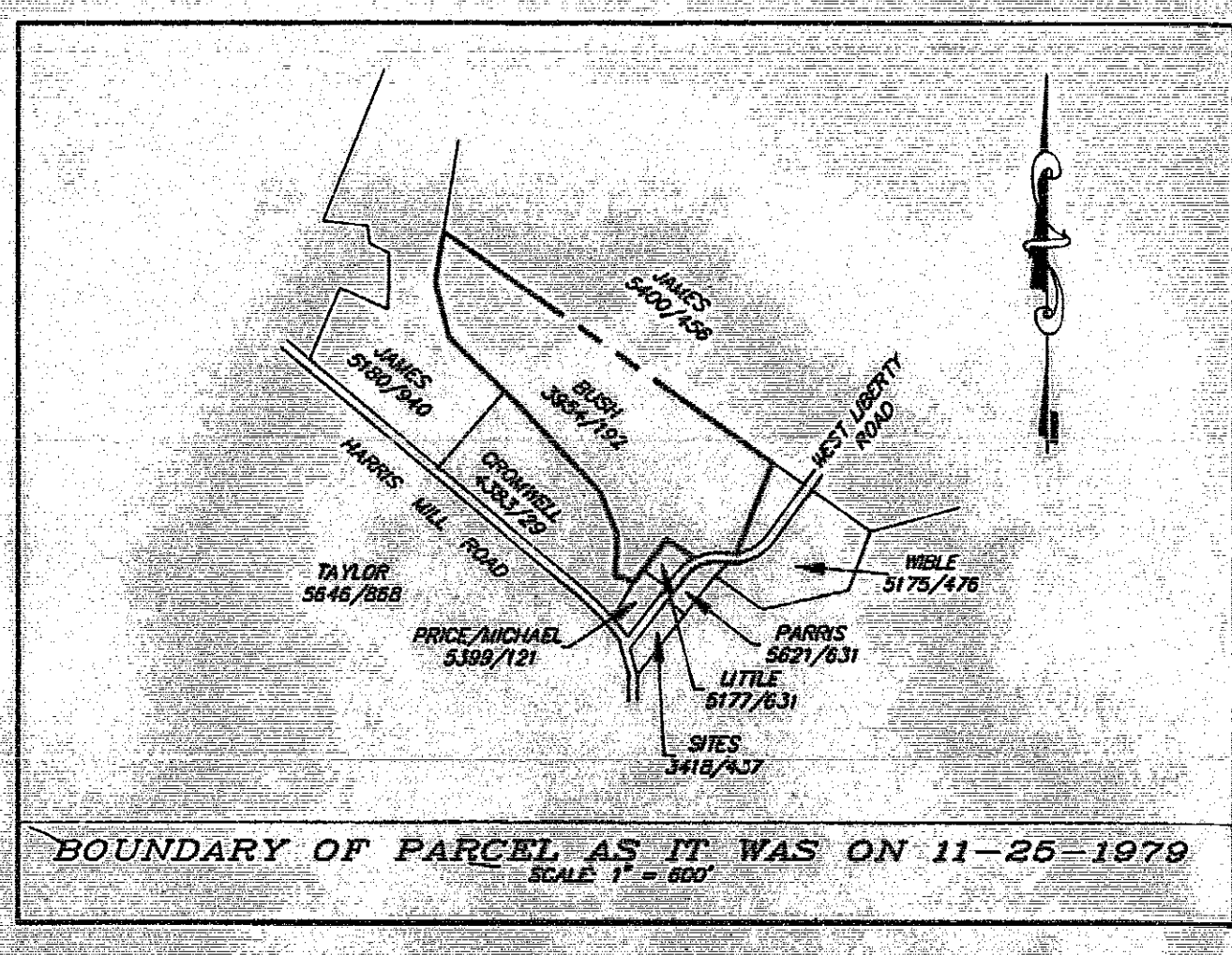
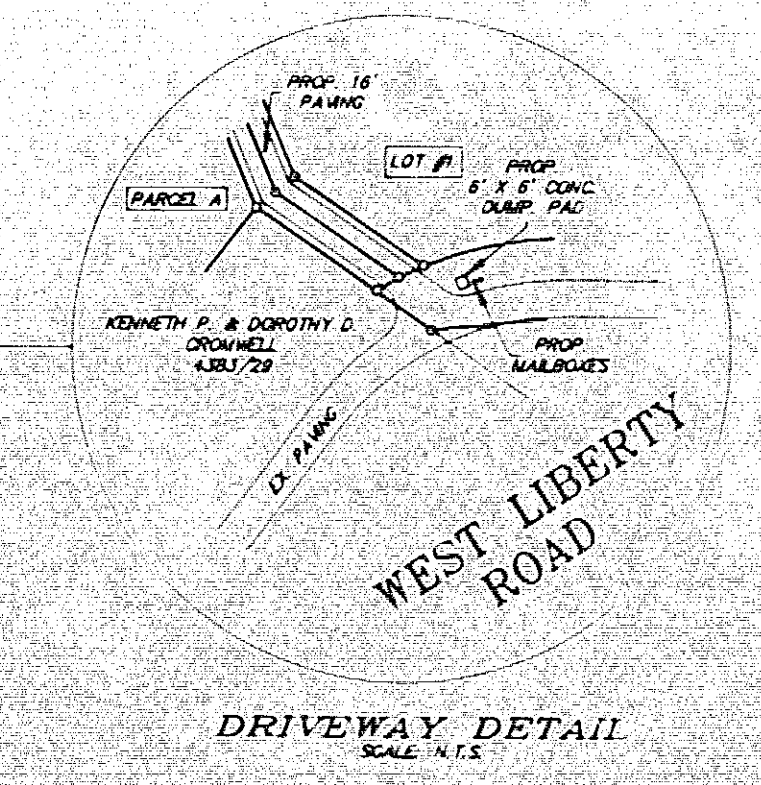


- LEGEND:**
- FOREST CONSERVATION EASEMENT (EXISTING FOREST)
 - 10,000 SQ. FT. SEPTIC RESERVE AREA
 - PERC TEST
 - FOREST BUFFER
 - COMMON DRIVE EASEMENT AND/OR FOREST CONSERVATION EASEMENT



- 20) THERE ARE NO EXISTING UNDERGROUND STORAGE TANKS ON SITE.
- 21) THIS PLAN IS TO BE USED FOR REFERENCE ONLY AND NOT TO BE USED FOR TITLE SEARCH.
- 22) NO FILLING OR CONSTRUCTION IS PERMITTED IN ANY WETLAND OR FLOODPLAIN WITHOUT PERMIT APPROVAL FROM ALL CONCERNED AGENCIES.
- CONDITIONS OF ZONING CASE HEARING NO. 93-289-SPH:**
- THE ANDERSON'S THEIR HEIRS, SUCCESSORS OR ASSIGNS, SHALL AT NO TIME RESTRICT ACCESS TO THE GRAVEYARD ON PARCEL "A" FOR LEGITIMATE VISITATION PURPOSES. THERE SHALL BE NO IMPROVEMENTS LOCATED ON PARCEL "A".
- THERE WILL BE NO FURTHER SUBDIVISION PERMITTED ON THIS SITE.

- GENERAL NOTES:**
- 1) AREA OF TRACT: GROSS AREA.....10.781 AC +/-
AREA OF HIGHWAY WIDENING.....0.134 AC +/-
NET AREA.....10.647 AC +/-
 - 2) CURRENT ZONING: RC-2, RC-4
MAP REFERENCE: NE 38 B
 - 3) DENSITY CALCULATIONS:
RC-4 DWELLINGS PERMITTED BETWEEN 6-10 AC. = 2
DWELLINGS PROPOSED = 1
RC-2 DWELLINGS PERMITTED = 2
DWELLINGS PROPOSED = 2
TOTAL DWELLINGS PERMITTED = 3
TOTAL DWELLINGS PROPOSED = 3
 - 4) OWNER: RICHARD W. HENNING AND DAVID W. HENNING
21308 WEST LIBERTY ROAD
PANTON, MARYLAND 21220
PHONE: N/A
 - 5) TAX ACCOUNT NUMBER: 0708030575
 - 6) DEED REFERENCE: 8991/140
 - 7) TAX MAP: 8 PARCEL NUMBER: 8
 - 8) CENSUS TRACT: 4070
REGIONAL PLANNING DISTRICT: ROTA
SCHOOL DISTRICT: 54
WATERSHED: DEER CREEK
SUB-WATERSHED: 081
 - 9) COUNCILMANIC DISTRICT: 3RD
ELECTION DISTRICT: 7TH
 - 10) ACCEPTANCE OF THIS PLAN IN NO WAY BINDS BALTIMORE COUNTY INTO REFUSE COLLECTION OF THIS DEVELOPMENT. AT THE TIME OF CONSTRUCTION, AND AFTER ALL REQUIREMENTS HAVE BEEN MET, A REPRESENTATIVE OF THE BUREAU WILL MEET WITH THE DEVELOPER OR HIS REPRESENTATIVES TO DISCUSS DETAILS OF REFUSE COLLECTION.
 - 11) ALL EXISTING BUILDINGS, WELLS, SEPTICS AND DRIVEWAYS WITHIN 100 FEET OF THE SITE ARE SHOWN.
 - 12) PANHANDLE ROAD SHALL BE IN ACCORDANCE WITH BALTIMORE COUNTY COUNCIL BILL NO. 172-89 AND RESOLUTION NO. 40-87.
 - 13) THE PANHANDLE SHALL BE PAVED WITHIN ONE YEAR OF THE ISSUANCE OF THE FIRST OCCUPANCY PERMIT OF THE LAST LOT TO BE SERVED, WHICHEVER COMES FIRST.
 - 14) WATER APPROPRIATION PERMIT #
 - 15) THIS PROPERTY IS SUBJECT TO THE CONDITIONS OF ZONING CASE HEARING NO. 93-289-SPH.
 - 16) THERE SHALL BE NO CLEARING, GRADING, CONSTRUCTION OR DISTURBANCE OF VEGETATION IN THE FOREST BUFFER EASEMENT, FOREST RETENTION AREA OR FOREST CONSERVATION EASEMENT EXCEPT AS PERMITTED BY THE BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT.
 - 17) NO CONSTRUCTION IS PERMITTED WITHIN 15 FEET OF ANY FOREST CONSERVATION EASEMENT, FOREST RETENTION AREA OR FOREST BUFFER EASEMENT.
 - 18) ANY FOREST BUFFER EASEMENT OR FOREST RETENTION AREAS SHOWN HEREON IS SUBJECT TO PROTECTIVE COVENANTS WHICH MAY BE FOUND IN THE LAND RECORDS OF BALTIMORE COUNTY, MARYLAND WHICH RESTRICT DISTURBANCE AND USE OF THESE AREAS.
 - 19) TREES AND FOREST WILL BE PROVIDED TO THE EXISTING GRAVEYARD ALONG THE COMMON DRIVE AND PRIVATE EASEMENTS AS SHOWN HEREON.



ROBERT R. WILSON AND ASSOCIATES, INC.

2408 ROCKS ROAD
FOREST HILL, MARYLAND 21050
PHONE: (410) 893-3700 FAX: (410) 896-5375

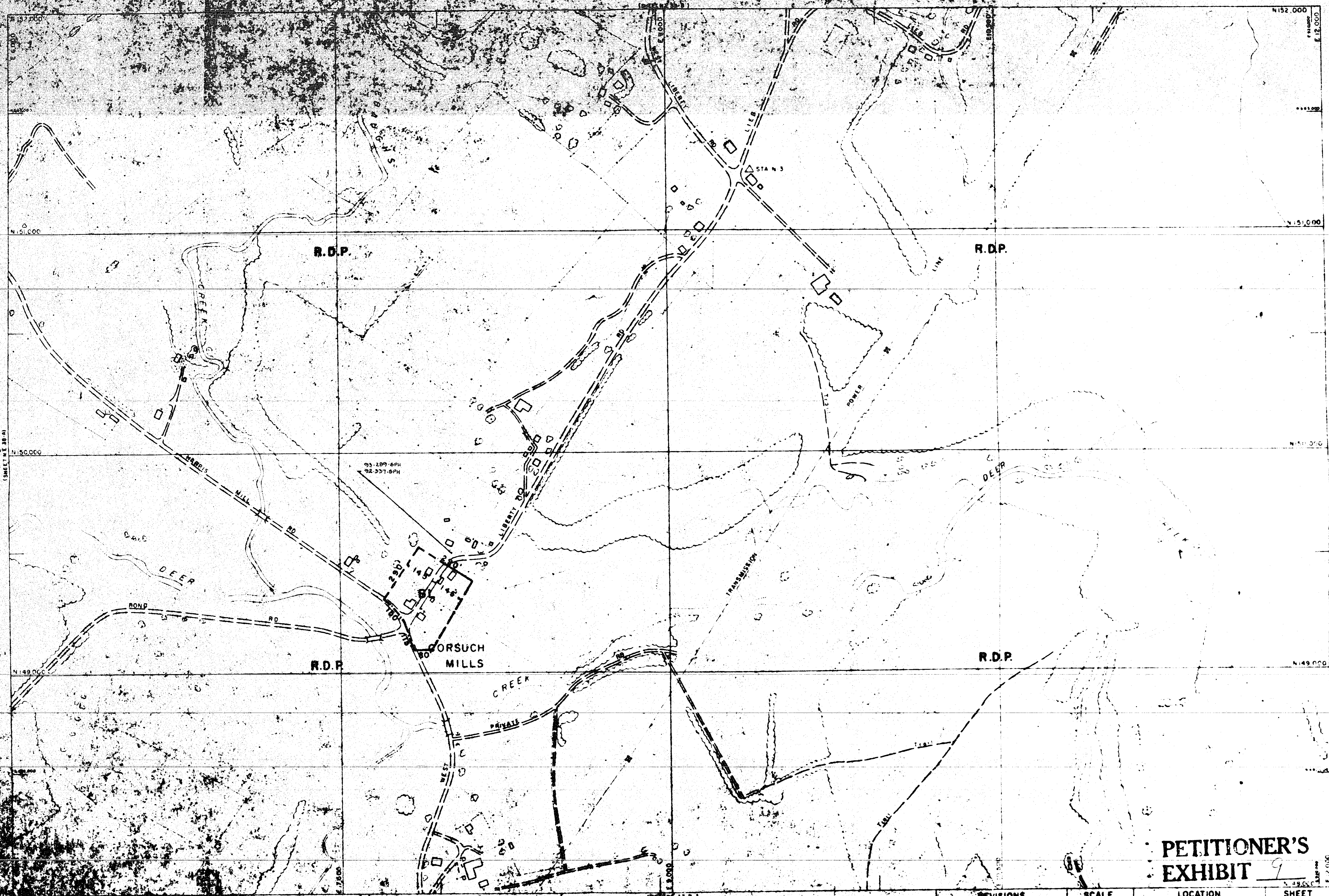
SCALE: 1" = 100' DATE: 4/25/94
JOB NUMBER: 9130 DRAWN: W. STYLER SHEET: 1 OF 1

MINOR SUBDIVISION OF
HENNING PROPERTY

"GORSUCH HILLS"

7TH ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND

PETITIONER'S EXHIBIT 2



ADOPTED BY THE
BALTIMORE COUNTY COUNCIL
MAY 24, 1971
BY BILLS NOS. 17, 10, 31, and 52

PHOTOGRAMMETRIC MAP OF BALTIMORE COUNTY, MARYLAND OFFICIAL ZONING MAP

REVISIONS		SCALE	LOCATION	SHEET
NO.	DATE	1" = 200'	GORSUCH MILLS	NE
		DATE OF PHOTOGRAPHY APRIL 1961		38-B
Compiled By Photogrammetric Methods MAPS INCORPORATED - BALTIMORE 22, MARYLAND				

PETITIONER'S
EXHIBIT 9